

MCRC 4990/2017
Rajesh Singh Parihar vs. State of MP and Anr.

Gwalior, dtd. 30/11/2017

Shri Atul Gupta, counsel for the applicant.

Shri RS Yadav, Public Prosecutor for the respondent No.1/State.

Shri R.K.Sharma, Senior Counsel with Shri Manish Sharma, counsel for the respondent No.2.

This application under Section 482 of CrPC has been filed for quashing the FIR in Crime No.206/2017 registered at Police Station Guna, District Guna for offence under Sections 354, 354-A, 34 of IPC and under Section 3(1)(w) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

The necessary facts for the disposal of present application in short are that respondent no.2- complainant lodged the following FIR :-

“12 First Information contents (प्रथम सूचना तथ्य):

बजे में सूचना है कि श्रीमान एसडीओपी महोदय गुना के पत्र क. /एसडीओपी/गुना/32/17 दिनांक 31/03/17 के द्वारा आवेदिका कुहेमलता एका शासकीय विमुक्त कन्या छात्रावास बमौरी जिला गुना के शिकायती आवेदन के संबंध में धारा 354,354ए,34 भादवि एवं एससीएसटी एकट की धारा 3(1)(w) का अपराध पंजीबद्ध करने हेतु प्राप्त हुआ। उपरोक्त आदेश के पालन में कायमी की जाती है। नकल आवेदन हस्वजेल है प्रति, श्रीमान पुलिस अधीक्षक महोदय, आ.जा.का थाना प्रभारी जिला गुना (म.प्र.) विषय श्री आर.एस.परिहार जिला संयोजक आजाका विभाग गुना द्वारा प्रताडित करने के संबंध में। महोदय, उपरोक्त विषय में निवेदन है कि मेरा नाम कुहेमलता एका है मैं आदिवासी महिला सहायक अध्यापक के पद पर पदस्थ हूं। वर्तमान में शा.विमुक्त जाति कन्या छात्रावास बमौरी का अधीक्षीक्य प्रभार है। जब से विभाग में श्री आर.परिहार जिला संयोजक पद पर आये हैं इसके कुछ दिन बाद से ही मुझे टार्चर करना प्रारंभ कर दिया गया। मुझे काम के बहाने एवं छात्रावास की अन्य जानकारी का बहाना बनाकर अपने निवास पर बुलाया करते थे। जब मैंने इनके बंगले पर जाना उचित नहीं समझा तो कुझे कई बार धमकी दी गई कि तुमको गवन के मामले में फसाया जायेगा एफ.आई.आर की जायेगी रिकवरी निकाली जायेगी। श्री परिहार ने मुझसे फोन पर अश्लील बातें की मुझसे कहा तुम हमारी दोस्त रहोगी तो क्या मेरे प्रायवेट पाट्सर्स गर्म हो जायेंगे और तुम्हारे प्रायवेट पाट्सर्स भी गर्म होंगे तो क्या तुम डालने से मना करोगी। तुम निर्वस्त्र हमारे सामने केट बाक करोगी तो हमको कुछ नहीं होगा, जब तक तुम हमको टच नहीं करोगी। टच करोगी तो मेरे प्रायवेट पाट्सर्स गर्म हो जायेंगे। रात के 11 बजे फोन लगाकर उक्त बात कही गई। मैंने मना किया तो मुझे

छात्रावास से हटाने की धमकी दी । मुझ पर दबाव बनाकर मुझे शारीरिक संबंध बनाने के लिए मजबूर किया गया । मुझे अपने निवास पर बुलाकर छात्रावास चार्ज में देने की बाते करने लगे फिर श्री आर.परिहार ने मेरा हाथ पकड़ लिए मैंने विरोध किया तो मुझे डराया कि अगर हाथ छुड़ाओगे तो हम कही और हाथ लगायेंगे । ऐसा कहकर उन्होंने चेस्ट को टच किया । मैं उठकर जाने लगी तो इन्होंने मुझे किचिन में चाय बनाने का बोलकर पीछे से आये और मुझे पीछे से पकड़कर अपने प्रायवेट पार्ट्स मुझसे टच कराने लगे । मैंने विरोध कर के बाहर आ गई इसके पश्चात मुझे शा.आ.कन्या आश्रम का प्रभार हटा दिया गया क्योंकि मैंने इनकी मन्त्रा पूरी नहीं की । मैं आदिवासी महिला मुझे इस प्रकार से अधिकारी द्वारा प्रताड़ित किया जा रहा है । विरोध करने पर धमकी दी जाती है कि छात्रावास से हटा दिया जावेगा । मुझ पर तरह तरह के आरोप लगाकर बार बार धमकाकर दबाव बनाकर प्रताड़ित किया जाता है । मैंने सी.बी.चंदेल ने मुझे पहली दफा फोन लगाकर साहब से मुलाकात कराई । मैंने सी.बी.चंदेल सर से पूछे मुझे क्यों बुला रहे हैं साहब, तो उन्होंने बोला अधिकारी से मेल जोल अच्छा रहता है उनसे आकर मिलो ऐसा कहा । मेरे द्वारा सी.बी.चंदेल को सूचित किया गया कि श्री परिहार जी के इरादों पर मुझे शंका है तो वो मुझसे अश्लील बातें करते हैं अश्लील हरकत करते हैं । मैं इनके अधीनस्थ कार्यरत होने के कारण ये सहन करती रही । अब सब टूट चुका है । इनकी अश्लील हरकत एवं धमकी से मैं टूट चूकी हूँ । मैं अत्यंत तनाव ग्रस्त हो चुकी हूँ । मैं आदिवासी महिला हूँ मुझे अधिकारी द्वारा प्रताड़ित किया जा रहा है । अतः श्रीमान्‌जी से निवेदन है कि श्री.आर.परिहार जिला संयोजक आदिम जाति कल्याण विभाग गुना के विरुद्ध कार्यवाही अतिशीघ्र करवाने की कृपा करें । हस्ताक्षर अंग्रेजी प्रार्थी कृ. हेमलता एक्का शा.विमुक्त जाति कन्या छात्रावास बमोरी जिला गुना (म.प्र.) 9926778507 ॥

It is submitted by learned counsel for the applicant that since the complainant was holding the the charge of Superintendent of two different hostels, a direction was issued by the Collector, Guna to withdraw the charge of post of Superintendent of one hostel from the person who was holding the charge of more than one hostel and accordingly, a notice was issued to the complainant- respondent No.2 to hand over the charge of the hostel. As the respondent No.2 was creating all the hurdles in handing over the charge, ultimately a complaint was made by the incoming incumbent. She was directed to take the charge *ex parte* and in spite of the instructions issued by the applicant, the complainant- respondent No.2 did not hand over the complete charge and all the relevant documents were withheld by her and apprehending some departmental action against her, she has lodged a false FIR. It is further submitted that in the above-

mentioned context, the delay in lodging the FIR would be material because according to the complainant, the incident of physical harassment took place on earlier occasion in between 15/12/2016 to 10/02/2017, whereas the FIR was lodged on 1/4/2017. The counsel for the applicant has also referred the letter dated 22/03/2017 issued by the applicant directing the Area Coordinator, AJAK, Guna to ensure that the charge of the Superintendent, Vimukt Jati Girls' Hostel, Bamori is handed over to the incoming incumbent Smt. Bhanu Patwa. Thereafter, an order dated 25/03/2017 was passed by the applicant, directing the Area Coordinator to ensure that charge of the institution is given to the incumbent and all the accounts of which charge is not given, should be freezed and the details of the material purchased during the last three years should also be prepared. It is further submitted by the counsel for the applicant that the girls of the hostel had made a written complaint to the Collector, Guna on 31/10/2012 against the respondent No.2 as she was involved in illicit activities thereby physically violating the occupants of the girls' hostel. Similarly, a notice was issued to the respondent No.2 on 3/01/2017 that one the girl is illegally residing in the hostel for the last three years whereas she was never admitted in the hostel and in spite of that, the respondent No.2 had allowed that girl to stay in the hostel. Thus, in short, it is the submission of counsel for the applicant that because the departmental action was taken against the respondent No.2 by the applicant and since the respondent No.2 was aggrieved by such departmental action, therefore, out of *mala fides* the FIR has been lodged.

Per contra, it is submitted by the counsel for the State that as the FIR discloses the commission of cognizable offence, therefore, the investigating agency is right in registering the FIR against the applicant. The matter shall be

investigated in a free and fair manner and final opinion shall be formed by the Investigating Officer and he would proceed in accordance with law.

It is submitted by learned Senior Counsel for the respondent No.2 that so far as the allegation of delay in lodging the FIR is concerned, it is submitted that the respondent No.2 has merely narrated the correct facts, otherwise respondent No.2 could have made the allegation that she was physically or sexually violated by the applicant immediately prior to lodging of the FIR. It is submitted that sexual harassment of a woman at the work place is not unknown and, therefore, the Supreme Court in the case of **Vishaka and Others vs. State of Rajasthan and Others** reported in **1997 SCC (Cri) 932** had directed for constitution of internal committee. It is further submitted that the applicant apart from harassing her physically and sexually, was in habit of sending indecent messages to the respondent No.2 and some of the messages have been placed on record. It is submitted that in the whatsapp messages the applicant had sought answer from the respondent No.2 that as to why she does not have any friend and had suggested that she should have friend. Thus, if these messages are considered in proper perspective, then it is clear that even by sending whatsapp messages the applicant was trying to become very frank with respondent No.2. It is further submitted that as the substantive post of respondent No.2 is Assistant Teacher and she is already holding the charge of Superintendent of one hostel, therefore, there was no reason for the respondent No.2 to get aggrieved by taking over of charge of one hostel and it is incorrect to say that the applicant has been falsely implicated only because of the fact that the charge of one hostel was taken over from the respondent No.2.

Heard the counsel for the parties.

The submissions made by the counsel for the applicant can be summarized as under:-

(I)That, the applicant is working as District Coordinator,AJAK Department, District Guna whereas the respondent No.2 was holding the charge of post of Superintendent of two different hostels.

(ii) Under the direction of the Collector, Guna, the charge of Vimukt Jati Girls' Hostel, Bamori was directed to be handed over to the incumbent which was not followed by respondent No.2 and accordingly, the charge was taken over *ex parte* and respondent No.2 is still withholding the important documents and accounts, as a result of which the accounts were directed to be freezed.

(iii) As the respondent No.2 is aggrieved by taking over of the charge of one hostel, therefore, she has lodged a false FIR and only because of departmental action which was taken against her in the month of March, 2017 the FIR has been lodged on 01/04/2017 alleging that she was sexually violated in between 15/12/2016 to 10/02/2017.

(iv) Therefore, under the circumstances, the delay in lodging the FIR assumes importance and if the delay is considered in proper perspective, it would be clear that the applicant has been falsely implicated.

Thus, the basic contention of the counsel for the applicant is that the FIR suffers from *mala fides* and, therefore, he has relied on the judgments of the Supreme Court in the cases of State of **Haryana vs. Bhajan Lal reported in 1992 Supp (1) SCC 335** and **Mahindra and Mahindra Financial Services Limited Vs. Rajiv Dubey, reported in (2009) 1 SCC (Cri) 603.**

The Supreme Court in the case of **Renu Kumari vs.**

Sanjay Kumar and Others reported in **(2008) 12 SCC**

346 has held as under :-

"11. As noted above, the powers possessed by the High Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the *mala fides* of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of *mala fides* against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings".

(See [Dhanalakshmi v. R. Prasanna Kumar](#)(1990 Supp SCC 686),[State of Bihar v. P.P. Sharma](#)(1992 Supp (1) SCC 222),[Rupan Deol Bajaj v. Kanwar Pal Singh Gill](#)(1995(6) SCC 194) ,[State of Kerala v. O.C. Kuttan](#)(1999(2) SCC 651),[State of U.P. v. O.P. Sharma](#)(1996 (7) SCC 705),[Rashmi Kumar v. Mahesh Kumar Bhada](#)(1997 (2) SCC 397),[Satvinder Kaur v. State \(Govt. of NCT of Delhi\)](#)

(1999 (8) SCC 728) and [Rajesh Bajaj v. State NCT of Delhi](#)(1999 (3) SCC 259).

The above position was again reiterated in State of Karnataka v. M. Devendrappa (2002) 3 SCC 89, State of M.P. v. Awadh Kishore Gupta (2004) 1 SCC 691 and State of Orissa v. Saroj Kumar Sahoo (2005) 13 SCC 540, SCC pp. 547-50, paras 8-11."

Thus, if the FIR discloses the commission of cognizable offence, then the *mala fide* of the first informant becomes of a secondary importance. Furthermore, the *mala fide* of an informant is a disputed question of fact which is required to be established by leading cogent and reliable evidence. In the present case, the applicant has relied upon certain departmental actions which had taken place prior to lodging of the FIR. The counsel for the respondent No.2 is right in submitting that if the FIR was the outcome of departmental action, then nobody had prevented the respondent No.2 from making an allegation of sexual or physical violation by the applicant immediately prior to lodging of the FIR.

At this stage, this Court is of the considered opinion that it is very difficult to ascertain that whether the FIR was lodged by way of counter-blast to the departmental action or the respondent No.2 was physically or sexually violated by the applicant as alleged in the FIR. The whatsapp messages which were placed by the respondent no.2 on record indicate that the applicant was frank with the respondent no.2 and was also sending personal whatsapp messages asking the respondent no.2 to make friendship. It was not expected by the senior officer to enter into such a dialogue with his junior lady employee. Thus, it cannot be said that the allegations made in the FIR are the outcome of departmental action which is being taken against her by the applicant under the order of the Collector, Guna.

Considering the facts and circumstances of the case, this

Court is of the opinion that the submission of *mala fide* cannot be accepted at this stage in the light of the material available on record as well as in the light of the documents placed on record by the respondent No.2 before this Court. It is a question of fact which is to be decided firstly by the Investigating Officer after concluding the investigation and if the Investigating Officer comes to the conclusion that the applicant is *prima facie* guilty of committing an offence alleged against him, then it will be for the trial Court to consider the allegation of *mala fides* after considering the evidence tested on the anvil of the cross-examination. Thus, this Court is of the view that the FIR in Crime No.206/2017 registered at Police Station Guna, District Guna for offence under Sections 354, 354-A, 34 of IPC and under Section 3(1) (w) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act at this stage does not call for any interference.

Accordingly, this application fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

MKB

MAHENDRA KUMAR BARIK
2017.12.04 10:48:09 +05'30'