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

% ***Reserved on: 11th July, 2025***
Pronounced on: 28th August, 2025

\+ **W.P. (CRL.) 3501/2018 & & CRL.M.A. 47419/2018**

ASIF HAMID KHAN
S/o Mr. Hamidullah Khan
R/o 216, Sanat Nagar, Srinagar

.....Petitioner

Through: Mr. Mayank Tripathi, Advocate.

versus

1. **STATE**
Through the Station House Officer
Police Station Tuglak Road
New Delhi 110003

2. MS. SHRUTI BHARDWAJ
R/o G-89, Second Floor,
Dilshad Colony, Delhi-110095
At Present posted at
Tehsidar, Jammu Development Authority
Vikas Bhawan, Rail Head Complex,
Jammu 180 012

.....Respondents

Through: Mr. Rahul Tyagi, ASC for State with Mr. Sangeet Sibou, Mr. Priyansh Raj Singh Senger and Mr. Aniket Kumar Singh, Advocates and SI Pooja Yadav, PS: Tughlak Road. Mr. Danish Aftab Chowdhury and Mr. Suhail Malik, Advocates for Complainant.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

"First my Fear; then my courtesy;
Last my speech.
My fear is your displeasure,
My courtesy my duty, and
My speech to beg your pardon."

Shakespeare

1. This aptly sums up the life of a woman; be it home or office.

2. This case is a reflection of Society, where despite stringent legislation and repeated lamentation about gender neutrality and equality to provide safe work environment; unfortunately the psychology and mindset of the men in Work Place where sexual harassment continues to haunt the women at Work Place, especially when it involves *"Power Dynamics*", has remained unchanged. The education or high Government position, is no protection to a woman from being subjected to sexual harassment. Respondent No.2, despite being a qualified lady who was a member of Kashmir Administrative Services, was also not spared of the harassment at her work place. This Petition is another glaring example of the struggle of a Woman wronged in her place of Work, to get justice.

3. Petitioner, Asif Hamid Khan has approach this Court under Article 226/227 Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) for setting aside of the *Order dated 04.09.2018* passed by the Ld. ASJ, New Delhi who has upheld the summoning Order dated 21.08.2017 passed by the Ld. CMM, New Delhi, in *FIR No. 16/2015 dated 10.02.2015 under Section 354A/506/509 Indian Penal Code* (*hereinafter referred to as "IPC"*), whereby despite a Closure Report, cognizance has been taken under S.354-

A/ S.509 IPC.

4. ***Briefly stated,*** Respondent No. 2, Smt. Shruti Bhardwaj, (*hereinafter referred to as Complainant)* had filed a Complaint dated 31.12.2014 in the Department of Hospitality and Protocol, Jammu and Kashmir Government, under the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 which was forwarded to the Chairperson of the Complaint Committee and the Committee, vide Government Order No. 1312-GAD of 2013 dated 13.09.2013 read with Government Order No. 38-GAD of 2015 dated 12.01.2015 (*hereinafter referred to as "POSH Act"*).

5. On 11.02.2015, after examining all the witnesses, the Enquiry Committee submitted its Report, wherein it was observed that there are certain inconsistencies in the statement and the written submissions filed by the Respondent No. 2, Smt. Shruti Bhardwaj. The Enquiry concluded that *the allegations made against the Petitioner, Asif Hamid Khan, were not established*.

6. She had also filed a Complaint dated 06.01.2015 with the Office of the Assistant Commissioner of Police, Chanakya Puri, New Delhi, on which *FIR No. 16/2015 dated 10.02.2015 under Section 354A/506/509 Indian Penal Code* (*hereinafter referred to as "IPC"*), was registered.

7. According to the Petitioner, the FIR No. 16/2015 was lodged on 10.02.2015, a day prior to the date of submission of the Report by the Committee i.e., on 11.02.2015.

8. Investigations were conducted in the FIR No. 16/2015 by the Police and Closure ***Report dated 21.05.2016*** was filed on the ground that the Complaint seems to be motivated and there is no evidence on record which

supported the allegations made by the Complainant in her Complaint against the Petitioner.

9. The Complainant preferred ***a Protest Petition*** against the *Closure Report*, which was disposed of *vide* Order dated 21.11.2016 *with a direction to the SHO/IO concerned to further investigate the matter and file the supplementary Report.*

10. After the further investigation, a ***Supplementary Closure Report*** was filed stating that no evidence has come on record against the Petitioner except the statement of the Complainant/Respondent No. 2, Smt. Shruti Bhardwaj and there were no other witnesses who corroborated the allegations made by her.

11. The Ld. CMM, *vide* Order dated 21.08.2017, noted that the proceedings of the Complaints Committee, cannot by any stretch of imagination, be equated to a criminal trial as has been observed by the Apex Court in *Stanzen Toyotetsu India (P) Ltd. v. Girish V.* (2014) 3 SCC 636. It was further observed that there was no need for any corroboration per se, of the statements made by the Complainant. Even otherwise, corroboration would only be required once it is concluded that a statement is not coherent or clear. There are categorical and clear allegations against the Accused/Petitioner and the veracity of the same would only be ascertained once a trial is conducted. ***The conclusions reached by the IO are not correct; to the contrary, there is ample and sufficient material which warrants summoning of Accused Asif Hamid Khan to face trial for the offence under Section 354A and 509 IPC.***

12. *Accordingly, summons were issued against the Petitioner vide Order dated 21.08.2017.*

13. The Petitioner preferred a ***Criminal Revision*** against the summoning Order dated 21.08.2017, which was dismissed vide Order 04.09.2018 by Ld. ASJ who observed that Respondent No. 2 has made averments that the Petitioner is a very influential person and due to his pressure, the Police filed the ***Closure report twice***. Further, that the criminal proceedings and the departmental proceedings are two different procedures and they operate in different fields with specific objectives.

14. The Ld. ASJ referred to the statements of *Ms. Sonam Chhosdon*, ***Smt. Sona Gupta, Ms. Neelam Kaul*** and ***husband of the Complainant*** *recorded under Section 161 Cr.P.C., to observe that there was sufficient corroboration* to show that the Ld. CMM has rightly summoned the Petitioner under Section 354A/509 IPC. It was concluded that the conclusions of the IO in submitting the Closure Reports, were not correct. Consequently, it was held that there is no illegality or infirmity in the Order dated 21.08.2017 of Ld. MM and dismissed the Revision Petition.

15. *The present Petition has been filed against the Order dated 04.09.2018 on the* ***grounds*** that the Report dated 11.02.2015 submitted by the Enquiry Committee constituted by the Government of Jammu and Kashmir under the provisions of POSH Act, is a *statutory Report* and could not have been ignored or brushed aside by the courts.

16. The Complainant, in her statement, stated that the Petitioner had been harassing her for the last one year i.e., 2014. During the investigation, the Police recovered the SMSs from the Forensic Lab and produced the same in their Closure Report filed under Section 173 Cr.P.C. A bare perusal of the messages would show that none of the messages indicate any kind of misbehaviour on the part of the Petitioner; much less behaviour attracting

penal provisions. In fact, it reveals that the Complainant shared a cordial relationship with the Petitioner and praised him as an efficient officer and thanked him for his support.

17. The statements of *Shri Sanjay Khazanchi, Shri Sushil, Shri Alexander, Shri B.K. Bhat, and Shri Zia-u-Rehman* were recorded and none of these witnesses supported the Complainant's version. During the course of further investigation, statements of witnesses namely, *Driver Shri Ashraf, Shri B.K. Bhat, Shri Rajinder Sushil, Shri Sanjay Khazanchi, Shri Viqar Rasool, and Ms. Jyotika Sambyal,* in addition to *Shri Gaurav Mittal, husband of the Complainant,* were recorded. These witnesses also did not support the version of the Complainant.

18. The Ld. Magistrate despite observing that the IO has prepared the *Closure Report* for want of corroboration of the statements made by the Respondent No. 2., has placed reliance only on the statement of the Complainant to hold that her statement is sufficient to attract the provisions of Section 354A and Section 509 IPC. The conclusion arrived at by the Ld. CMM cannot be without any basis or material gathered by the prosecution or by the Police, which cannot be termed as whimsical or arbitrary. Magistrate has no jurisdiction to distort evidence with a view to seek corroboration and/or draw inferences.

19. The *Statutory Report of the Committee and two Police Reports* did not find any substance in the allegations of the Complainant. Ld. ASJ and Ld. CMM did not consider the Report of the Complaints Committee, wherein it is categorically mentioned that after appreciation of evidence available, the allegations made by the Respondent No. 2, are not established and the Complaint seems to have been triggered because of the fear of alleged

transfer of Respondent No. 2 from Delhi. The witnesses produced by the Complainant/Respondent No.2 in her support, did not corroborate the allegations of sexual harassment. It is further submitted that the Ld. CMM has observed that the Committee did not conclude that the Respondent No.2 has deposed falsely or her credibility, which is contrary to the Committee Report.

20. The statement of *Ms. Neelam Koul* recorded during the Enquiry by the Enquiry Committee, clearly reflects that the husband of the Respondent No.2 had told her that the Petitioner has been threatening the Respondent No.2 of transfer, she was scared that he being an influential person, may get her transferred, which compelled them to lodge this Complaint.

21. It is further submitted that the Petitioner is alleged to have held the hand of Respondent No. 2 on 26.12.2014, but he was not present in the office due to the death of his nephew in the intervening night of 25-26.12.2014.

22. The Ld. CMM has selectively read the statement of witnesses while summoning the Petitioner. Reliance placed on statements under Section 161 CrPC, which is contrary to the settled provisions of law. It is submitted that the Ld. CMM and the Ld. ASJ have failed to appreciate that the allegations in the FIR are absurd and inherently improbable.

23. The Ld. ASJ and Ld. CMM have given a go-by to the statements of these witnesses and have arbitrarily chosen the statements of four witnesses to sustain their Order, which even otherwise is also not sustainable. The entire case of the Complainant is based on *"no evidence"* against the Petitioner, but they have selectively chosen some of the witnesses for the purpose of sustaining the Order of issuing process. Therefore, both the

Courts have acted in excess of their jurisdiction in summoning the Petitioner in a case where there is no credible charge against him.

24. Further, it is difficult to comprehend that a lady who has been sexually harassed on 01.04.2014, will on subsequent dates send praiseworthy messages to the Petitioner from her mobile phone. The Respondent No.2 had cordial relations with the Petitioner but it seems to have changed due to some disagreement on some administrative issues, in the last week of December 2014. Respondent No.2 herself admitted before the Enquiry Committee that she had sought help of the Petitioner when she was injured on 14.12.2014 and when her mother needed medical attention on 28.10.2014 and even for repair of her car when her husband accompanied the Respondent No.2 to the office of the Petitioner in August-September, 2014.

25. It is submitted that the Ld. ASJ and Ld. CMM did not consider that the criminal proceedings are manifestly attended with mala fide and that the proceedings are maliciously instituted with an ulterior motive for wreaking vengeance on the Petitioner and with a view to spite him due to private and personal grudges.

26. *Accordingly, it is prayed that the present Petition may be allowed and the Impugned order dated 04.09.2018 and the Summoning order dated 21.08.2017 be quashed.*

27. ***Status Report has been filed on behalf of the State/Respondent No.1*** stating that *FIR No. 16/2015 dated 10.02.2015 under Section 354A/506/509* was registered on the Complaint of Respondent No. 2. It is stated in the Complaint that the Complainant had joined as Manager, J&K Guest House, Chanakyapuri, New Delhi on 31.01.2014. Since then, the Petitioner, who is

posted as Additional Resident Commissioner, had tried to develop close proximity with her against her consent and used to pass sexually coloured remarks and comments on her physical appearance, her clothes, lipstick, and so on. She further stated that he had the habit of discussing her personal life in office and directed her to come to office even on holidays and insisted she stay in his office beyond office hours, even when there was no pending official work. She had further stated that he directed her to accompany him to Malls for having dinner and when she refused straightforwardly, he threatened her that he would get her transferred out of Delhi. She also alleged that on innumerable occasions, he demanded favours of a sexual nature from her.

28. It is also alleged that two weeks prior to the filing of the present Complaint, the Petitioner forcibly caught her hand and started gazing at her neck. The Police carried out the investigations and on 19.02.2015, the statement of the Complainant under Section 164 Cr.P.C., was recorded, where she supported her case.

29. The IO also recorded the statements under Section 161 Cr.P.C., of Ms *Ms. Sonam Chhosdon, Sona Gupta*, and *Ms. Neelam Kaul*, who corroborated the case of the Complainant to the extent that she had complained to them with respect to the harassment by the Petitioner. Ms. Sonam Chhosdon stated that she observed that the Petitioner would keep the Complainant sitting in his room for long hours. The statement of *Mr. Zia-ur-Rahman* was also recorded under Section 161 CrPC, who refuted the claim of the Complainant that she ever reported any harassment by the Petitioner, to him.

30. During investigations, the mobile phone of the Petitioner as well as the Respondent No.2 were seized and sent to FSL for opinion regarding Text

Messages that were exchanged between the Complainant and the Petitioner for the period 30.10.2014 to 30.12.2014. The Expert opinion stated that *these text messages were normal and were friendly conversation between them till 30.12.2014.* For the month of March 2015, the Text messages of the Complainant were retrieved and no objectionable messages were discernible from these texts.

31. The Report of the Enquiry Committee was also collected from the Resident Commission, in which the Committee came to the conclusion that the allegations made by the Complainant of sexual harassment against the Petitioner, are not established.

32. It is submitted that from the investigation conducted so far, no evidence has come on record as alleged, and *hence a Closure Report was filed in FIR No. 16/2015 before the Ld. Trial Court*.

33. The ***Respondent No. 2 filed a Protest Petition*** stating that the IO had not examined the independent witnesses i.e., Driver Ashraf, B.K. Bhat, Sushil Bhat, Sanjay Khazanchi, Viqar Rasool, and Jyotika Jambal. Thereafter, on the directions of Ld. CMM vide Order dated 21.11.2016, further investigations were conducted and statements of Driver Ashraf, RTO Sushil Bhat, and MTO Sanjay Khazanchi who had deposed before the Internal Complaints Committee, were recorded under Section 161 Cr.P.C. They however, stated that they had no knowledge about the matter. The statement of *B.K. Bhat* was also recorded, and he stated that the Complainant had never made any Complaint to him in this regard. *Shri Viqar Rasool (MLA)* and *Smt. Jyotika Jambal*, in her Section 161 CrPC statement, corroborated the Complaints made by the Complainant with respect to the harassment by the Petitioner.

34. The Supplementary Closure Report was prepared and filed before the Ld. CMM. **Ld. CMM in the Order dated 21.08.2017, observed** that the conclusions reached by the IO were not correct; to the contrary, there is ample and sufficient material which warrants summoning of the Accused to face trial for the offence u/s 354A and 509 IPC.

35. The Order dated 21.08.2017 passed by Ld. CMM was challenged by the Petitioner in Criminal Revision before the Ld. ASJ, which was dismissed vide Order 04.09.2018.

36. ***Written submissions on behalf of the Petitioner*** have also been filed wherein the grounds as raised in the Petition, have been reiterated. Reliance has been placed on *Ashoo Surendranath Tewari v. DSP EOW, CBI* 2020(3)LRC 288(SC), *Captain Arvind Kathpalia v Govt of NCT of Delhi & Anr.* Crl M.C. 1626/2023 (Delhi High Court), *Ashish Chauhan v. State*, W.P(Crl.) 2802/2019 (Delhi High Court), *Johnson Jacob v State WP (Crl.)* 1279/2021 (Delhi High Court), *Keshav v. State of Maharashtra*, Criminal Application No. 734/2020 (Bombay High Court) and *Dr. Minaketan Pani v. State of Orissa,* Crl. MC No. 3407/2010 (Orissa High Court). *Accordingly, it is prayed that the present Petition be allowed and the Summoning Order dated 21.08.2017, be quashed.*

37. ***Written submissions have been filed on behalf of the Respondent No.2,*** wherein she has prayed for the dismissal of the present Petition. It is submitted that the Petitioner is an influential person and the FIR was registered only after the directions of this Court. When she approached the then DCP for registration of FIR, he advised her to seek a transfer. The Police filed a ***Closure Report*** the second time, even though her Protest Petition had been allowed by the Ld. MM. The Petitioner has not filed any

of the statements along with the present Petition and he is liable to be prosecuted for perjury, for making false assertions on oath.

38. It is further submitted that the victim was transferred when she was on maternity leave. Not only this, the Counsel for the victim was also targeted as he was asked to resign as the Dy. Advocate General, J&K, within days of having taken over the present case. The Accused has never joined Police investigation nor appeared before any Court.

39. The Respondent No.2 has sought dismissal of the present Petition ***on the grounds*** that Departmental proceedings have no bearing on criminal proceedings. Reliance have been placed on *Ajit Kumar Nag vs G.M.(P.J.) Indian Oil Corporation* 2005 (7) SCC 764 and *State of Bihar v Kamleshwar Prasad* Cr. Misc 15423 of 2018.

40. It is submitted that *Writ proceedings against an Order dismissing a Revision Petition, is are not maintainable* and the only remedy is under Section 482 CrPC. The Petitioner has raised triable issues before this Court.

41. It is submitted that the Revision Petition was filed exactly on the same grounds, which got dismissed in view of the law laid down by the Hon'ble Supreme Court.

42. The Petitioner is just trying to delay the trial proceedings so as to ensure that the victim withdraws the prosecution, out of sheer helplessness. *Accordingly, it is prayed that the present Petition be dismissed*.

Submissions heard and record perused.

43. In the present case, the Respondent No.2 being a Member of Kashmir Administrative Services, who was posted as Manager, in Resident Commission, Jammu & Kashmir, made a *Complaint dated 31.12.2014 against the Petitioner, Asif Hamid Khan, Additional Resident*

Commissioner, posted in the same office, about sexual harassment at place of work, to her Department which was forwarded to the Chairperson, Complaint Committee on Sexual Harassment at Workplace, which conducted an enquiry under the POSH Act. The statements of the witnesses were recorded and thereafter, a clean chit was given to the Petitioner vide Report dated 11.2.2015.

43. While the Enquiry was being conducted by Internal Complaints Committee, the Complainant made a Complaint dated 06.01.2015 to the Police, on which FIR No.16/2015 was recorded on 10.02.2015. Pertinently, the Closure Report dated 21.05.2016 was submitted before the Ld. M.M who directed further investigations, but resulted in another Closure Report dated 17.04.2017. The Ld. M.M, however, found merit in the Complaint and took cognizance under Section 354A and Section 509 IPC vide Order dated 21.08.2017. This Order was upheld by the Ld. ASJ vide Impugned Order dated 04.09.2018.

Whether the Court is bound to Accept the Closure Report submitted in an FIR:

44. The ***first aspect*** for consideration is whether the Magistrate is bound to accept the Closure Report submitted by the Police or it is within his competence to form his independent opinion on the basis of the evidence, documents and the statements collected during the investigation by the Investigating Agency, about the commission/non-commission of the offence.

45. Chapter XII of Cr.P.C. (*now Chapter XIII of Bharatiya Nagarik Suraksha Sanhita, 2023*) deals with the *Information to the Police and their Powers to investigate*. It commences with S.154 which sates that on

receiving information about the commission of cognizable offence, the Incharge Police Station, is obligated to register the FIR. Thereafter, detailed procedure in S.157 is provided for investigation in cognizable offence. S. 173 deals with the report of police officer on completion of investigation.

46. This aspect was considered in the case of *Bhagwat Singh vs. Commissioner of Police* (1985) 2 SCC 537, wherein it was observed that *…The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156…*

47. Similarly, a Constitutional Judge bench of the Apex Court in *Dharam Pal v. State of Haryana*, (2014) 3 SCC 306 has observed as under:

> ***35.*** *In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter."*

48. In *Chandra Babu v. State*, (2015) 8 SCC 774, the Apex Court reiterated the legal position *that a Magistrate can disagree with the police report and take cognizance and issue process and summons to the accused. Thus, the Magistrate has the jurisdiction to ignore the opinion expressed by the investigating officer and independently apply his mind to the facts that have emerged from the investigation*.

49. Similar observations have been made by the Coordinate bench of this Cour in *Abhilasha Chahalia v. State*, 2017 SCC OnLine Del 8638.

50. Therefore, even though the State had filed the closure Report twice, *the learned M.M was well within his powers to appreciate The investigations done and the evidence collected to form and independent opinion to take the cognizance Report, irrespective of the Closure Report which got filed by the I.O in the aforesaid FIR*.

Implications of Enquiry Report by ICC on Criminal proceedings:

51. The ***second contention*** raised on behalf of the Petitioner is that a detailed Enquiry in the Complaint was conducted by ICC, wherein statements of number of witnesses were recorded, but after considering the entire evidence led by both the parties, the Petitioner had already been exonerated, but the Enquiry Report was not considered by the Court.

52. The question, therefore, *is whether the Disciplinary Enquiry Report/ICC Report is binding in the Criminal Trial and that no FIR or the Chargesheet can be filed, merely because the Petitioner had been exonerated in a Departmental Enquiry*.

53. In the case of *M/s Stanzen Toyotetsu India Pvt. Ltd. (Supra)*, the Apex Court observed that there is no legal bar to the conduct of disciplinary proceedings and a criminal trial simultaneously. Reference was made to the

case of *Depot Manager, Andhra Pradesh State Road Transport Corporation vs. Mohd. Yousuf Miyan* (1997) 2 SCC 699 wherein it was declared by the Apex Court that Departmental proceedings are distinctly different from the purpose behind prosecution of offenders for commission of an offence by them. *While criminal prosecution for an offence is launched for violation of a duty that the offender owes to the Society, Departmental Enquiry is aimed at maintaining discipline and efficiency in service*. The standard of proof in the departmental proceedings is not same as of the criminal trial. It was observed that conceptually the two operate in different spheres that are intended to serve distinctly different purposes. *Therefore, merely because the Petitioner has been exonerated in the Departmental Enquiry, cannot be the sole basis for discharging him in the present FIR.*

54. As has been noted above, the criminal offences are distinctly defined under the IPC and have defined connotations. The Departmental Enquiry pertained to the alleged sexual offences as defined under POSH Act and it cannot be said that there is any binding effect of the observations made therein. It does not work as a precedent or an estoppel on the findings. This is more so because as already noted above, in the case of *Depot Manager, Andhra Pradesh State Road Transport Corporation* (supra), the parameters for adjudicating a criminal offence are very different from that under the Departmental Enquiry.

55. In *State of Rajasthan v. B.K. Meena*, (1996) 6 SCC 417, the Apex Court distinguished between the disciplinary/departmental proceedings and criminal proceedings in terms of approach *and objective of the both*. It was observed:

> ***17.*** *There is yet another reason. The approach and the*

> *objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him under the Prevention of Corruption Act (and the Penal Code, 1860, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.*

56. *Therefore, mere exoneration in the Departmental Enquiry cannot be the sole basis for discharging the Petitioner in the present FIR.*

Whether Prima Facie Case Under S. 354-A/509 IPC is Made Out from the Charge-Sheet:

57. Safe Work environment, with respect, dignity and decency are fundamental to gender equality. While now, though grudgingly, woman's right to equal opportunity of work, has found recognition but challenges being faced at Workplace are insurmountable and still resisted by "*masculine strategists"* who have specious reasons to justify their acts and attitudes. The underlying challenge is the low reporting largely, due to societal pressures, fear of retaliation and reprisals from perpetrator.

58. This is one case where against all odds, the Respondent No.2/Complainant has found courage to not only to report the harassment to

which she was subjected by her superior, but has stood all adversity and has fought her battle bravely till the Court to get justice for herself. The might of the State and attempt to deflate her strength and courage, can also be observed from the fact that the State filed the Closure Report in the FIR, not once but twice. Unfortunately, the Court judiciously has stood with the law, which incidentally in the present case, sides the Complainant.

59. Having said so, it may be considered whether the findings of ICC are sufficient to show that there is no case made out in the present matter.

60. The *first aspect* is from whose prism these comments are to be assessed. While to some it may seem as innocuous, jocular remarks made casually, but these need to be considered from the *victim's perspective* and not stereotyped notions of what is acceptable behaviour as it would result in reinforcement of the prevailing discrimination.

61. *As has been succinctly stated in the case of Kerry Ellison vs. Nicholas F. Brady* 924 (F).2d 872, *that men tend to view some forms of comments/acts as harmless social interactions to which, only overly sensitive woman would object. However, the victim's perspective needs to be understood to analyse whether such conduct which many may found unobjectionable, may offend the women.*

62. *In Stanzen Toyotetsu India* (supra), the Apex Court observed that there is no legal bar to the conduct of disciplinary proceeding and a criminal trial to proceed simultaneously. The criminal prosecution for an offence is launched for violation of the law as encapsulated in the Penal Code while departmental enquiry is aimed at maintaining discipline and efficiency in service. The standard of proof and the application of rules and evidence are and operate in different spheres with a different purpose to serve.

63. Certain aspects of the ***Complaint as noted by Ld. MM,*** are reproduced as under:

> *"Asking "what do you have in your mind when you get ready in the morning"; "What if someone falls in love with you"; "but if I hug you and kiss you" and thereafter the accused had caught hold of the hand whereupon the complainant stated "Sir, I will stop you". The further statement of the proposed accused is that "as to why you are breathing pensively"; the statements that the complainant looks different everyday and she is pretty looking, calling her unnecessarily at odd hours, squarely comes within the ambit of Section 354A as well as Section 509 IPC."*

64. Ld. M.M in his Order on Summoning dated 21.08.2017 which has been upheld by the Impugned Order of ASJ dated 04.09.2018, had clearly noted that it was not to comment and adjudicate about the correctness/otherwise of the Committee Report but to consider whether there was enough material to summon the Petitioner/Accused. There were specific and clear allegations made in the Complaint by the Respondent No.2 which were sufficient for the purpose of summoning, the correctness and the veracity of which can be tested only by conducting the trial.

65. *It was further observed by Ld. MM* that the Committee Report did not conclude that the Complainant had deposed falsely nor was her credibility questioned. The conclusions were based on the observations that there were inconsistencies/contradictions and corroboration of the statement made by the Complainant with those of other witnesses and was motivated. The *learned MM has rightly observed* that the present trial is not to adjudicate the correctness of the Report of the Committee, but to independently ascertain if prima facie case was made out from the Police

Report. Even otherwise, there was no finding of the statement of the Complainant being found false. *Therefore, the Report of Committee could not have been the sole basis for accepting the Closure Report, as has been correctly observed by Ld.MM.*

66. It has been rightly observed by the Ld. MM that when the statement is read holistically and not by arbitrarily taking out specific parts out of context, there are sufficient allegations making out a clear-cut case of Section 354-A/509 IPC.

67. Not only this, the allegations made by the statement find corroboration in the statement of *Smt. Sonam Choosden* recorded under Section 161 Cr.P.C, who had stated that in the month of August, 2014 or September, 2014 she had been conveyed verbally by the Complainant about certain objectionable messages that were being forwarded to her by the Complainant. She further stated that the Complainant had cried in front of her in regard to the allegations made in this case.

68. Likewise, statement of *Smt. Sona Gupta* was also recorded under Section 161 Cr.P.C., who had stated that she was told by the Complainant while the flood work was being carried out in the month of September, 2014, she was called from her house to Prithvi Raj House, but after meeting the Petitioner she was upset and told that she was not made to do work, but was made to listen to '*sher-o-shayri*'.

69. Similarly, *Smt. Jyotika Samwal* was another witness whose statement was recorded under Section 161 Cr.P.C, who stated that the Petitioner used to follow all her activities and interfere a lot in her personal life. She further stated that the Complainant had gone through a lot of trauma because of this man. He through a message had invited her alone for lunch and dinner.

70. Another witness is *Smt. Neelam Kaul* in her statement under Section 161 Cr.P.C. had stated that the Complainant had told her about the incident where she had advised her to maintain distance. She had also been informed by the Complainant that she would be making Complaint to Higher Authorities, where she had advised her not to do so, but to sort it out, if the Petitioner apologizes her. However, the Petitioner did not agree to do so.

71. To say that the statement of the Complainant is not corroborated by independent witnesses, would not be correct. The contention that various witnesses were recorded by the Department, but they all supported the Petitioner is of little significance, because many may have chosen not to depose against the Petitioner, but the statement of the Complainant and the four witnesses mentioned above, cannot be disregarded and are sufficient for summoning of the Petitioner.

72. In this context, it may also be observed that the Apex Court and High Courts have repeatedly stated that the sole testimony of the Complainant/Prosecutrix is sufficient to bring home a conviction, if it is found to be of ***sterling quality***. Here is a case where Complainant has made specific allegations which cannot be trashed or claimed to be motivated without being put to the test of trustworthiness by way of trial.

73. The Ld. ASJ did not find any fault with the Order of Ld. MM to uphold it.

Conclusion:

74. It has to be thus, concluded that there is sufficient material by way of statement of the Complainant and the witnesses as aforementioned, to prima facie disclose an offence under Section 354-A/509 IPC. The Ld. M.M has rightly discarded the Closure Report and taken cognizance in accordance

with law. The Ld. ASJ has rightly upheld the Order of cognizance and Summoning.

75. There is no merit in the present Petition, which is hereby dismissed. Pending Applications are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 28, 2025/*N*