

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

**Reserved on 27.02.2023
Pronounced on 15.03.2023**

CRMC No. 281/2016
c/w
CRMC No. 437/2016
OWP No. 1083/2015

Alok Betab
Alok Betab and others
Alok Betab

.....Appellant(s)/Petitioner(s)

Through: Mr. Sunil Sethi, Sr. Advocate with
Mr. Vishal Mahajan, Advocate

vs

State of J&K and others
State of J&K and others
State of J&K and others

..... Respondent(s)

Through: Mr. Pawan Dev Singh, Dy.AG
Mr. Gagan Basotra, Sr. Advocate with
Mr. Rishabh Sharma, Advocate
Ms. Navdeep Kour, Advocate
Ms. Surinder Kour, Sr. Advocate with
Mr. Sunil Kumar, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. By this common judgment, the afore-titled three petitions are proposed to be disposed of.
2. Vide petition bearing CRMC No. 281/2016, petitioner-Alok Betab has challenged FIR No. 158/2016 for offences under Sections 509 and 506 RPC registered with Police Station, Domana. Vide petition under Section 561-A of J&K Cr.P.C bearing CRMC No. 437/2016, petitioners-Alok Betab and others have challenged FIR No. 251/2016 for offences under Sections 509, 354-B, 500 and 506 RPC read with Sections 67 and 67-A of the Information Technology Act, whereas vide OWP No. 1083/2015,

petitioner-Alok Betab has challenged order No. SCW/08/2015/65 dated 24.06.2015 issued by the Secretary, J&K State Commission for women.

3. As already noted, the petitioner has thrown challenge to FIR No. 158/2016 for offences under Sections 509 and 506 RPC registered with Police Station, Domana. Before coming to the contentions raised in this petition, it would be apt to notice the contents of the impugned FIR that was lodged by respondent No.2 on 28.05.2016 with Police Station, Domana. The same are reproduced as under:

“That the complainant is working as PRT Teacher in DAV Jammu for the last about eleven years but the day the present Principal Alok Betab took the charge of School as Principal in year 2012, my life has become hell right from the day one. He started torturing me by using abusive language and also by calling me in his office time and again without any rhyme and reason, I requested him not to harass me but he did not stop his attitude and he used to call her on Mobile during the late hours, which I stated in the previous matter as well as stated verbally in my this complaint on 09.09.2014. When he was called at the Police Station, he apologized for his conduct before my father and uncle, in presence of SHO of the Police Station and he also tendered written apology me to withdraw my complaint his assurance that he will not repeat the act again but to my surprise on the very next day, he tortured me in front of everybody by saying that my complaint had not done anything wrong to him and the clear act I force at you to withdraw the same forcibly. That he again started harassing her so I brought the matter to DAV higher authorities at Delhi for necessary action. When he came to know about the same he told me that he has very high approach with the higher authorities, so nobody can harm me. However, DAV authorities called me Delhi one time for enquiry and I requested them to shift the Principal for impartial probe and enquiry in view of guidelines framed by Hon’ble Supreme Court in Vishaka Case but Principal was right in saying so that he has approached with DAV authorities that’s why D.A.V authorities without transferring him, dismissed my complaint without proper enquiry. In view of this unfair enquiry complainant approached National Women Commission Delhi wherein I have stated all the facts in detail. NWC Delhi after thorough verification directed the J&K Women Commission Jammu to take action in the matter in the month of January 2015 and accordingly I approached Women Commission Jammu with the application and directed for enquiry. Women Commission has called Alok Betab and heard him and a report was sought from SHO P/S Domana and accordingly after giving opportunity to both the sides, the Commission Prima-facie found substance in my allegations and accordingly vide this office No.SCW/08/2015/15 dated 24.06.2015 directed Chairman DAV Management Committee Delhi to transfer him for thorough enquiry in view of Vishaka’s case, but he got stay from the High Court by mismanagement of facts. The High Court issued Dasti notice for

my service but I was present in school, he did not serve me and next day got exparte stay and now when there was stay in the matter and when I informed DAV about it, he started harassing me again very much from the day he came to know about the same. He is using his teachers to harass me indirectly and on 9th of May 2016, he sent few teachers along with Mr. Bhushan. He told me to take the case back from Women Commission as he has been told by the Principal that he has to do the job at all cost. He told me to come to the office but I straightway refused to do so. Again, next day, he came and forced me to do the same. I again refused, again he came back and repeated the same. I again denied. Next day Mr. Alok Betab has sent me a notice wherein there was no mention about the office of Principal at the top through Sunita Jamwal and accordingly replied the notice 16.5.2016 and I have mentioned all the details again. On 16.5.2016, Sunita Jamwal noted me unofficial letter for pressurizing me to oblige the Principal as it seem so. I again replied, he on receiving, forced me to take my letter back. Besides this on 17.5.2016 Meenu Betab (Principal's wife) threatened me during lunch time to take my case back otherwise she told me to inflect my husband in a false case. So sighting back data when he was on leave in the year 2014, I told her that is total lie and it is all afterthought to force me to take my case back. She told that nobody would transfer me and my husband. On 25.05.2016 when there was non-teaching day there were no children in the class, only teachers were called in the School. Mr. Alok Betab came to me to take my case back from Women Commission and I will accommodate you for that, falling which he would spoil her career being the head of the School. He further told me that he likes me and my company, due to which I feel disgraced and ashamed with his cheap behaviour. When I objected to him strongly, he told me that he will spoil me and my husband's career through his wife Meenu Betab. It is pertinent to mention here that in the same School, his wife, his sister-in-law and other relatives are working and he is using their full influence and support."

4. It has been averred in the petition that prior to lodging of the FIR, respondent No. 3/complainant had filed a complaint against the petitioner before SHO, Police Station, Domana on 07.09.2014 in which she had levelled allegations of sexual harassment at work place against the petitioner. It is averred that the said complaint was withdrawn by the complainant in terms of her letter dated 09.09.2014. Thereafter, the complainant is alleged to have addressed a similar complaint to the DAV College Managing Committee which was received on 15.09.2014. Upon receipt of this complaint, the Managing Committee constituted a Complaints Committee and the said Committee, after conducting thorough

investigation into the matter, rendered its report dated 01.12.2014 thereby giving clean chit to the petitioner and admonishing the complainant in terms of memo dated 19.12.2014.

5. It is further alleged that another complaint dated 24.03.2015 came to be lodged by the respondent-complainant with the State Commission for Women making similar allegations and an order came to be passed by the Secretary of the Commission on 24.06.2015, whereby a recommendation was made to the effect that petitioner-Alok Betab, who was working as Principal, MHAC, Nagbani be shifted from his present place of posting so as to allow fair investigation into the complaint of the respondent/complainant. The said order has been challenged by the petitioner vide OWP No. 1083/2015. Vide order dated 20.08.2015 passed by this Court, the impugned recommendation of the Commission has been stayed.
6. Another complaint came to be lodged by the complainant against petitioner-Alok Betab, the Principal of MHAC, Nagbani School and other staff members on 10.08.2016, and it culminated in registration of FIR No.251/2016 of P/S Domana. The same is subject matter of challenge in the petition bearing CRMC No.437/2016. The FIR reads as under complainant:

“1. That the applicant complainant is working as PRT teacher in Nagbani School Jammu.

2. That the applicant complainant is aggrieved of the fact that she is the worst sufferer of sexual harassment and exploitation for which she was already filed FIR against accused Alok Betab Principal Nagbani Jammu which was registered on 29-5-2016 bearing FIR No. 158/2016 wherein no SIT has been framed and matter is under investigation and challan is likely to be produced after the investigation.

3. That the accused the Principal along with his wife Meenu Betab, Sister-in-law Simmi Padha teachers Poonam Mahagan , Sunita Sharma, Anju Gupta, Shashi Bedi, Sukral Sharma, Deepti and other teachers whose list is enclosed with the complaint has convened a press conference on 30/5/2016 in order to teach a lesson after registration of FIR No. 158/16 wherein name of the complainant has been disclosed and published in print media as well as in electronic media and also name has been flashed in the internet on that day. All these persons have tarnished the image and dignity of complainant by using derogatory remarks and also accused principal by using other teachers on his behalf who have passed many messages in the internet by giving great injury and insult to the modesty of applicant utter violation of the guidelines framed by the hon'ble Supreme Court of India in case of Vishakha wherein name of victim cannot be disclosed in such matters of sexual harassment and exploitation by doing so accused principal has tarnished the image and dignity of applicant in the public and general life and he has also tried to insult the applicant in the eye of student, husband and other family members which amounts to a grave serious offence and it also amounts to be pressure tactics of the accused principal to pressurize for taking the previous FIR back.

4. That the complainant after coming to know about the same has brought all the internet messages and paper cutting to the knowledge of SHO P/S, Domana through Whatsapp and now again applicant is being complaint against all the accused who have participated in the press conference along with photocopy of their names and signature that till date no FIR has been registered. Though the sufficient material on the basis of whatsapp messages and newspaper reporting are there which cannot be denied or overruled even in this matter no witness is required because sufficient material in the shape of whatsapp messages and print media reporting is already there and enclosed even worthy Chief Minister of J/K state has also directed in general to take immediate steps in such matters of sexual harassment and exploitation which has been reported in the Daily Excelsior and Tribune on 18/7/16. Even otherwise in such matter action shall be taken henceforth to send strong messages to others so that nobody dare to take such steps again.

5. That accused principal is responsible for all this happening along with his wife because they are the sole beneficiaries in the matter and is the mastermind of all this happenings. He has also used his sister-in-law, her son Agam Padha, Anju Gupta and other teachers and relatives for passing the remarks against the complainant in internet by giving incarnation insult and defamation to the modesty integrity and public life of complainant. There is every likelihood of breach of peace because complainant is belonging to a minority community and such kind of hostile criminal defamatory unwanted attitude to the accused the principal and the teacher involved in the matter highly objectionable for which action under the law is required to be taken without any delay because accused principal is daily intimidating the applicant and he has installed CCTV cameras to harass and also there is an interference in the peaceful life of the applicant during the school hours. It also amounts to confinement because with the fear of CCTV cameras nobody speak to the complainant and is confined to the classroom. He is very cunning fellow because he has not used his mobile and laptop in

order to save his skin but has used his teachers kith and kin to spoil and tarnish my image in the public and accused principal very gladly submitted his laptop and mobile to police for check upon if SIT/Police entertained it then it will be great blunder and mockery of system because as a common man sense accused can use his own equipment for the said purpose rather Police/SIT showed inquire the mobiles of Anju Gupta, Agam Padha , Simmi Padha , Meenu Betab , Poonam Mahajan, Sunita Sharma, Sukral Sharma and also photographs of the newspapers are the real and the original proofs enclosed here with along with internet material .

6. That the accused Principal who is sitting at the chair of Principal and is on bail in the previous FIR is no more revengeful and he is using all bearings and is having blessings of his blue eyed bosses at the DAV Head Quarter, New Delhi for which I have already submitted complaint in the matter which is already pending with SHO P/S Domana/SIT by virtue of which the accused deliberately carried DAV Committee under his blue eyed Director J. P Shoor and four others over and above the SIT and subjudice matter in the High Court in order to hamper the investigation and also to know the version of the witnesses deposed in FIR 158/16 which is a great offense also and SIT should also take note of it and put proper section in the matter to deal with the situation he has used the teachers under his command to tarnish my image in the general public, student, relatives and my family. Even said principal is making anonymous communications to defame my name with male teachers(JE) which is a serious offense as it will have a serious impact on my married life which cannot be compensated in any manner and in case if any action is not taken in the matter than complainant will have no option rather than to put an end to his life and children for which all the above the said persons and the others will be responsible who are trying to hush upto the matter .

7. That the complainant is filing the instant complaint which is required to be registered henceforth and thorough investigation in the matter is also to be done under the provision of section 66 and 67-A of IT Act , 500 RPC(Defamation), 504RPC(Intentional insult), 506RPC(Criminal intimidation), 507 RPC(Annoyance communication), 509 RPC(Insult to modesty) and all the concerned persons are required to be dealt under the law and even these persons are openly making tainting remarks to the applicant that what Police and SIT has done in the matter though SIT is framed at the instance of complaint for just and fair probe and anybody who tries at the instance of complainant for just functioning of Police/SIT will also be responsible for interference into the functioning of the Police and administration of justice. Keeping in view of above facts, it is submitted that SHO P/S Damana and SIT be directed to register the FIR in the above relevant provisions and also other provisions regarding confinement and hampering the investigation be also taken into account and guilty be bring to the task so that they be punished under the law so that nobody will dare again to repeat such things in future with other women like me because the job of the teacher is pious one and if the Principal whose the Rakshak becomes Bakshak than who will send the student school and will give wrong signals in the general public and also crime against the women at a work place shall be dealt with from lands.”

7. The common grounds, which have been urged by the petitioner/petitioners in all the aforesaid three petitions, are that the complainant has, by making repeated complaints against the Principal of the School, Alok Betab tried to settle a personal score with him by misusing the process of law. It is contended that the fact that respondent/complainant has time and again levelled similar allegations in all her complaints before various fora repeatedly goes on to show that the complainant is using the process of law for oblique purposes as a weapon of harassment against petitioner-Alok Betab. It has been contended that a bare perusal of the impugned FIRs would suggest that no offence is made out against the petitioner/petitioners.
8. Regarding challenge to the recommendation of the State Women Commission, the main ground urged by the petitioner is that the recommendation was made by the Secretary of the Commission, who had no jurisdiction to do so as the Commission at the relevant time was without a Chairman.
9. The respondents including the respondent/complainant have in their pleadings submitted that this Court in exercise of its power under Section 482 Cr.P.C. cannot scuttle a genuine prosecution when the Investigating Agency during the course of investigation has assembled material to *prima facie* show that offences against the petitioner/petitioners are made out. It has been submitted that respondent/complainant has been subjected to sexual harassment by the petitioner/petitioners repeatedly which has compelled her to make repeated complaints against them. Therefore, it cannot be a ground for quashing the proceedings.

10. I have heard learned counsel for the parties and perused the record including the Case Diaries relating to the impugned FIRs.
11. So far as the scope of power of the High Court under Section 482 Cr.P.C is concerned, it is by now settled by the various judicial precedents of the Supreme Court and of this Court that the power under section 482 Cr.P.C. to quash the criminal proceedings has to be exercised sparingly only in deserving cases. The illustrations of such deserving cases have been laid down by the Supreme Court in the case of **State of Haryana v Choudhary Bhajan Lal and others, 1992 Supp-1 SCC 335**. These illustrations are reproduced as under:

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [305D-H; 306A-E].”

12. In light of foregoing principles, let us now analyze the facts of the instant cases so as to determine whether or not the case of the petitioners falls in any of the afore-noted illustrations.
13. The facts that emanate from the record and which are not in dispute are that respondent/complainant was working as primary teacher with MHAC, Nagbani, School Jammu and petitioner-Alok Betab was working as a Principal in the said school. The respondent/complainant applied for ex-India leave with effect from 10.07.2014 to 25.08.2014. Instead of joining duty on 25.08.2014, she joined the school on 26.08.2014. The case of the complainant for approval of leave from 10.07.2014 to 25.08.2014 was submitted to the competent authority by the Principal, however, certain objections were raised by the competent authority and the complainant was asked to submit a fresh affidavit in accordance with the proforma prescribed by the management. The same was conveyed to the complainant by the petitioner-Alok Betab.
14. It seems that the above events became the genesis of strained relations between the complainant and the Principal (petitioner). The complainant as is clear from the complaints lodged by her from time to time, perceived it as an act of harassment perpetrated upon her by the Principal. The first complaint was lodged by the complainant against the Principal before the SHO Police Station, Domana on 07.09.2014. The same was withdrawn by her on the basis of a compromise arrived at between her and the Principal. The compromise was arrived at on 09.09.2014.

15. Another complaint of sexual harassment was addressed by the complainant to the management of the school on 05.09.2014 that was received by the management on 15.09.2014. It appears that a Complaints Committee was constituted by the management in terms of provisions contained in the Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter to be referred to as the POSH Act). The Committee comprised four members which included Mr. J. Kackria, Director, Mrs. Sushma Arya, Principal DAV Yamuna Nagar, Mrs. Chitra Nakra, Principal DAV Public School, Vikaspuri, New Delhi and Mrs. Indu Chaswal from NGO. An enquiry was conducted by the aforesaid Committee regarding the allegations of sexual harassment made by the complainant against the petitioner/Principal. The Committee, after thorough enquiry into the allegations made by the respondent/complainant, concluded that there is no case of sexual harassment. It was also observed by the Committee that the complainant should desist from resorting to taking advantage of being a female and she should obey the lawful orders of the management. A perusal of the report of the Committee clearly shows that genesis of the strained relations between the petitioner and the complainant is the insistence of the Principal upon submission of affidavit by the complainant as per the proforma prescribed by the management, which he had done under the directions of the management.
16. After the aforesaid report was rendered by the Complaints Committee, the complainant moved State Commission for Women with a complaint dated 26.03.2015 containing the same allegations of sexual harassment against the petitioner. On the basis of this complaint, a recommendation was made

by the Secretary of the Commission that the petitioner-Alok Betab should be transferred from the present place of posting so as to allow fair investigation. This was done by the Secretary vide his order dated 24.06.2015 and the same has been stayed by this Court in terms of order dated 20.08.2015.

17. The complainant did not stop here and instead of challenging the report of the Complaints Committee, she lodged the impugned FIR bearing No. 158/2016 on 28.05.2016. Besides, repeating the allegations already made by her in her previous complaint, the complainant further alleged that on 09.05.2016, the petitioner/Principal tried to force her to withdraw her complaint before the State Women's Commission and the same was conveyed to her through some teachers. She went on to allege that on 17.05.2016, wife of the petitioner threatened her and asked her to withdraw her case. It was further alleged that on 25.05.2016 when there was a non-teaching day, petitioner-Alok Betab called her out of the class and asked her to withdraw the case, failing which he would spoil her career. At the same time, it was alleged by the complainant that the petitioner told her that he likes her and her company, due to which she felt disgraced and ashamed. This FIR came to be challenged by the petitioner before this Court and vide order dated 07.06.2016, a direction was issued that the final report in the impugned FIR shall not be produced.
18. The aforesaid sequence of events did not stop here. The complainant lodged another FIR against the petitioner-Alok Betab and other teachers of the school on 10.08.2016, contents whereof, have been reproduced hereinabove. The crux of these allegations is that at the instance of

petitioner-Alok Betab, some other teachers of the school held a press conference wherein they supported the version of petitioner-Alok Betab and made derogatory remarks against the complainant. It has been alleged that the accused in the said FIR have, in violation of the guidelines of the Supreme Court in Vishakha's case, nominated the complainant who is victim of sexual harassment thereby tarnishing her image and dignity. It has also been alleged that the accused have uploaded comments on social media which are derogatory to the dignity of the complainant.

19. From the foregoing sequence of events, it is clear that the respondent/complainant has, in order to settle a service dispute with the management of the school, gone on to lodge repeated complaints against her Principal. It appears that petitioner-Alok Betab, in his capacity as Principal of the school, conveyed the observation of the management to the complainant, who instead of fulfilling the requisite, retaliated by lodging repeated complaints and FIRs including the impugned FIRs. By doing so, it appears that the complainant has tried to have her own way and attempted to pressurize her superior officers and the management so that no action for overstaying the leave is taken against her.
20. The allegations of sexual harassment have been thoroughly investigated by an independent body constituted by the management. The Committee included three ladies, out of whom, one was an independent person from an NGO and two others hold the positions of Principal. The fourth member was Director of the Managing Committee. Thus, it is not a case where the allegations of sexual harassment made by the complainant against the petitioner-Alok Betab were enquired into by a Committee whose members

were working under the subordination of the perpetrator of the alleged acts of harassment but it is a case where, having regard to the stature of the members of the Committee, it was impossible for petitioner-Alok Betab to exert any influence upon them. The report clearly shows that the Committee has gone into every aspect of the matter and they have given a fair hearing to the complainant to present her version whereafter they have come to the conclusion that no case of sexual harassment is made out against petitioner-Alok Betab and that the complainant needs to follow the rules and regulations of the Managing Committee.

21. Instead of abiding by the orders of the management, the complainant went on to make another complaint against the petitioner before the State Women Commission as also before the Police. The allegations in the impugned FIR bearing No. 158/2016 relating to sexual harassment that are alleged to have taken place on 25.05.2016 appear to be highly improbable given the background of hostile relations between petitioner-Alok Betab and the complainant. The complainant as per her own case alleges that on 26.05.2016, petitioner-Alok Betab asked her to withdraw her complaint and threatened to spoil her career and in the same breath, she alleges that the petitioner told her that he likes her as well as her company. It is impossible that a person who has highly strained relations with a woman would express his liking for the said woman knowing fully well that such conduct would invite more complaints/FIRs against him. It seems that the respondent/complainant has added these allegations to her previous allegations, because her earlier allegations of sexual harassment against the

petitioner were found baseless by the Complaints Committee. Thus, these allegations are inherently improbable.

22. That takes us to the second impugned FIR i.e. FIR No. 251/2016. As already noted, in the said FIR, the complainant is aggrieved of the action of the petitioners/accused in organizing a press conference in support of Principal-Alok Betab. The FIR has been registered for offences under section 509, 354-B, 500, 506 RPC and 67 and 67-A IT Act. In the FIR, there are no allegations against the accused that they have extended any threat to the complainant with a view to compel her to do or not to do a particular act nor there is any allegation that accused have made any gesture or word so as to insult the modesty of the complainant. The only allegation in the impugned FIR is that the accused have nominated the complainant in violation of the guidelines laid down in Vishakha's case as a result of which, her image has been tarnished in the general public. It is further alleged that the accused have uploaded comments relating to the complainant on social media.

23. So far as offences under Sections 67 and 67-A of the IT Act are concerned, the ingredients of these offences are not attracted in the instant case. Even if it is assumed that the accused uploaded the alleged comments on social media, the same are neither lascivious nor do the same appeal to the prurient interest and the same do not even tend to deprave and corrupt persons, who are likely to read these comments. These comments do not contain any sexually explicit act or conduct. The comments and the press notes only express support to the version of the Principal and condemn the action of the complainant in lodging baseless allegations against the

Principal. So this is a case where none of the cognizable offences i.e. offences under section 509 RPC, 67 and 67-A of the IT Act are made out even from a bare perusal of the FIR bearing No. 251/2016.

24. A perusal of the comments alleged to have been uploaded by the accused on social media and the press notes, which have been collected during the investigation of the impugned FIR, shows that the accused have supported the stand of their Principal and termed the allegations made by the complainant as baseless. Even if it is assumed that by making these comments, the accused have lowered the image of the complainant in the eyes of general public still then being a non-cognizable offence, the Police had no jurisdiction to enter upon investigation in this regard. Even otherwise as per section 199 of the Code of Criminal Procedure, a person can be prosecuted for an offence punishable under Chapter XXI of RPC, under which offence of defamation falls, only upon a complaint made by some person aggrieved by the offence. Therefore, the Police had no business to enter upon the investigation of offence under section 500 RPC. The offence being non cognizable and the Police being not the aggrieved person, the investigation into the said offence could not have been undertaken by the police.

25. The Police went ahead with the registration of the FIR on the basis of the allegations made by the complainant which at best make out a cognizable offence against the petitioners. The same could not have been done by the Police without the order of the Magistrate as is clear from the provisions contained in Section 155 of the CrPC. In fact, a perusal of the record would reveal that the complainant had initially filed a complaint before the Chief

Judicial Magistrate, Jammu and the same was forwarded by the Chief Judicial Magistrate to Superintendent of Police, Rural, Jammu with a direction to send status report by or before 12.08.2016. Instead of sending report to the Magistrate, the Police went ahead with the registration of the FIR without there being an order of the Magistrate, despite the allegations being non-cognizable in nature.

26. That takes us to order dated 24.06.2015 passed by the Secretary, State Women's Commission, whereby a recommendation has been made to the management of the school in which petitioner was working as a Principal to transfer him from the existing place of posting in order to ensure fair enquiry into the allegations of sexual harassment made against him. The same appears to have been passed by the Secretary without there being Commission in place at the relevant date. The petitioner has placed on record documents which show that the State Women Commission was headless from 10.03.2015 to 24.06.2015, and this is not in dispute. However, the impugned recommendation has been made by the Secretary of the Commission on 24.06.2015.
27. In its reply, the State Women Commission's has contended that the said order has been passed by the Secretary in exercise of powers under section 9 of the State Commission for Women Act, 1999, which reads as under:

“9. Procedure to be regulated by the Commission. —(1)
The Commission or a committee thereof shall meet as and when necessary and shall meet at such time and place as the Chairperson may think fit.

(2) The Commission shall regulate its own procedure and the procedure of the committees thereof.

(3) All orders and decisions of the Commission shall be authenticated by the Member-Secretary or any other officer

of the Commission duly authorized by the Member-Secretary
in this behalf.”

28. A perusal of the aforesaid provision reveals that the Member Secretary of the Commission has only power to authenticate orders or decisions of the Commission, meaning thereby that the decision has to be taken by the Commission. The Commission has been defined under section 2(a) of the Act, according to which, it means the State Commission for Women constituted under section 3. As per section 3 of the Act, the Commission consists of Chairperson and two part time members to be nominated by the Government and one Secretary of the rank of Additional Secretary to the Government.
29. The impugned recommendation has been passed by the Secretary of the State Women Commission and not by the Commission. It is correct that as per section 7, vacancies would not invalidate proceedings of the Commission but in the instant case, it is not even claimed by the State Commission in its reply that the complaint of the respondent/complainant was considered by the Commission. The only stand taken by the State Commission is that the Secretary of the Commission has power to issue orders in terms of section 9 of the Act. As already noted, the said power is only to authenticate the decision or orders of the Commission and not to pass an order or decision. The impugned recommendation made by the Secretary of the Commission is therefore, without any jurisdiction.
30. Even otherwise, after coming into the effect of the Jammu and Kashmir Reorganization Act, 2019, the State Women for Commission Act stands repealed. Thus, the proceedings before the State Women’s Commission, on

the basis of the complaint, lodged by the respondent/complainant, have been rendered redundant.

31. From the foregoing analysis of the facts emanating in all the three cases, it is revealed that the complainant has, by launching repeated complaints before the Police and other fora tried to settle her personal score with the Principal(petitioner-Alok Betab) with whom, she holds a grudge that he is unnecessarily and repeatedly asking her to comply with certain requirements in connection with grant of leave.
32. The Supreme Court has, in the case of **Robert John D' Souza and others v Stephen Gomes and another, SLP Criminal No. 330 of 2015, decided on 21.07.2015** observed that court must ensure that criminal prosecution is not used as an instrument of harassment for seeking private vendetta or with an ulterior motive to pressurize the accused. In **M/s Medchi Chemicals and Pharma Private Ltd. v M/s Biological E Limited, 2000(3) SCC 269**, the Supreme Court has observed that frustrated litigants ought not to be indulged to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount. Again, in **Mohan Goswami and anr. vs State of Uttaranchal, and others, (2007) 12 SCC 1**, the Supreme Court has laid down that court proceedings are not to be permitted to degenerate into a weapon of harassment or persecution.
33. In the instant, case as already noted, the complainant has repeatedly lodged complaints and proceedings before different fora against the petitioner-

Alok Betab. She has not stopped here. She has even implicated his wife and other relatives and well-wishers by filing second FIR, in which besides making allegations against the accused, she has given guidelines to the Investigating Agency as to in what manner the investigation is to be conducted. She has threatened the Investigating Agency of the said FIR that in case no action is taken in the matter, then she will have no option but to put an end to the life of some male teacher with whom the accused are alleged to have linked her and also to end the life of his children, for which accused would be responsible. She has further threatened the Investigating Agency that anybody who tries to interfere into the functioning of the Police and administration of justice would be responsible for interference and hampering the investigation and that they should be taken to the task.

34. The complainant has problem with the installation of CCTV in the school premises as according to her, this stops her from speaking to anyone and forces her to remain confined to classroom. She cries foul about the conduct of Principal Alok Betab not using a mobile cell phone. These allegations contained in the impugned FIR clearly show that even a lawful and bonafide action of the principal is being perceived as an act of harassment by the complainant. The conduct of the complainant in making sweeping allegations not only against the petitioner but also against his family and supporters, clearly smacks of personal vendetta of the complainant against the petitioner-Principal. A perusal of the report of the Complaints Committee reveals that the complainant had not even spared Late Capt. Dewan Singh, Chairman LMC against whom she had made

allegations of bias. Thus, it appears that the complainant by lodging these repeated complaints and FIRs is trying to threaten the management of the school so that she can have her own way in the matter of her service career.

35. With above backdrop of the facts, it appears to be a clear cut case of brazen attempt on the part of the complainant to persecute the petitioner-Alok Betab, his family members and the management of the school. In fact the management of DAV College Management Committee has filed an application for intervention in OWP No. 1083/2015 in which they have contended that the complainant is habitual in making allegations for ulterior considerations and she cannot be allowed to malign the reputation of the institution by involving its head into false and frivolous case of sexual harassment. It has been submitted in the said application that if the management concedes to the pressure tactics of the people like the complainant there would be total indiscipline in the educational institution, which would not be good for the said institution.

36. Thus, the manner in which the complainant has invoked allegations relating to sexual harassment against the Principal of the school in order to circumvent the procedure laid down by the management for grant of leave to its employees, casts a serious doubt about the veracity of the allegations made by the complainant. Therefore, it has become imperative to this Court to prevent the abuse of process of law. The allegations made in the impugned FIRs are absurd and inherently improbable. Besides this, the criminal prosecution initiated by the complainant against the petitioner(petitioners) is manifestly actuated with *mala fides* with an ulterior motive for wrecking vengeance against the accused persons due to

private and personal grudge. Thus, this is a fit case where this Court should exercise its power under section 482 Cr.P.C. to quash the impugned FIRs as also the impugned order passed by the State Women's Commission.

37. For the foregoing reasons, all the afore-titled petitions are allowed and impugned FIRs bearing No. 158/2016 and No. 251/2016, both registered with Police Station, Domana as well as proceedings emanating therefrom are quashed. Impugned order No.SCW/08/2015/65 dated 24.06.2015 passed by the Secretary of the State Women Commission is also quashed.

(SANJAY DHAR)
JUDGE

Jammu
15.03.2023
Rakesh

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

