

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 441/2021

Mohammad Altaf Bhat

...Petitioner(s)

Through:

Mr. Tasaduq H. Khawaja, Advocate with
Mr. Ab. Muizz, Advocate.

vs.

Principal Chief of Commissioner and Ors.

...Respondent(s)

Through:

Mr. Z. A. Qureshi, Sr. Advocate with
Ms. Monisa Manzoor, Advocate for R 4.
Mr. Umar Rashid, Advocate for R 1 to 3.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

28.11.2024

(ORAL)

1. The petitioner herein initially filed the instant writ petition under

Article 226 of the Constitution seeking for the following reliefs:-

- A. Issue a writ of certiorari or any other appropriate writ quashing the Impugned report issued by the ICC against the Petitioner on the complaint dated, 16 October 2017;
- B. Issue a writ of mandamus or any other appropriate writ for constituting a fresh ICC who can conduct the proceedings be novo.

2. During the pendency of the petition, an amendment came to be sought in the petition by laying a motion by the petitioner herein being CM 1087/2023, which motion came to be allowed by this court on 15th March, 2024, and consequently the petitioner filed the amended petition and sought the following reliefs:

- A. Issue a writ of certiorari or any other appropriate writ quashing the Impugned report issued by the ICC against the Petitioner on the complaint dated, 16 October 2017;
- B. Issue an appropriate writ quashing complaint dated 15.9.2017 and consequential proceedings initiated thereon.

3. The case set up by the petitioner in the amended petition is that he joined the Income Tax Department in the year 1991 as Stenographer/Upper Division Clerk (UDC) and came to be promoted subsequently against the post of Office Superintendent, and that the respondent 4 herein holding a post of Tax Assistant and being an employee of the Income Tax Department in the year 2016, while working under the general superintendence of the petitioner herein filed a complaint before the Principal Commissioner of Income Tax, J&K, respondent 2 herein levelling bogus allegations against the petitioner herein, therein the said complaint, alleging that the petitioner herein remains most of the time under the influence of drugs and keeps playing videos on his office computer, which complaint came to be taken cognizance of by the respondents, and in the month of February 2017, the Assistant Commissioner of Tax, Range-3, Srinagar, vide letter dated 28th February 2017, informed the Additional Commissioner of Income Tax, Range-3, Srinagar, that the respondent 4 herein has not been able to substantiate her allegations against the petitioner herein for want of proof, and as such, the complaint filed was withdrawn by her subsequently, stating further therein the letter that no such incident as was alleged by the respondent 4 herein against the petitioner herein had taken place and that the whole incident was a misunderstanding and that despite this, the respondent 4 herein yet filed an application before the Chief Judicial Magistrate, Srinagar against the petitioner herein and leveled similar allegations therein the said complaint as were leveled in the complaint filed by her before the official

respondents and sought a direction in the name of concerned Police Station for proceeding against the petitioner herein whereupon the Chief Judicial Magistrate Srinagar directed SHO Police Station Rajbagh to register an FIR against the petitioner herein under Section 354 RPC and investigate into the matter, consequent to which FIR 47/ 2017 came to be registered against the petitioner herein for commission of offences under Section 354 RPC and same got culminated into filing of a charge sheet before the Chief Judicial Magistrate, Srinagar on 18th October 2017, and in the said charge sheet, the petitioner herein came to be acquitted on 6th of September 2018 and that on 9th of February 2021, petitioner herein received a copy yet another complaint dated 16th of October 2017 filed by respondent 4 herein against the petitioner herein before the Internal Complaints Committee of the department (for short the ICC), through Whatsapp, making petitioner herein aware first time about the pendency of the proceedings before the ICC against him, which complaint had been filed qua an alleged incident dated 25th of April 2016 against the petitioner herein and that the said complaint had been filed by respondent 4 herein after a delay of more than one year and five months from the date of the alleged incident dated 25th of April 2016, and that subsequent to the filing of reply by the petitioner herein before the ICC against the said complaint, the ICC framed a report in the said complaint on 25th of February 2021, without giving any opportunity to the petitioner herein to defend the case set up against him by respondent 4 herein and made a recommendation of imposing of a fine of Rs 1 lakh upon petitioner

herein to be payable to respondent 4 herein besides initiation of an action for misconduct against the petitioner herein.

4. The petitioner has maintained the instant petition essentially on the ground that the entire proceedings before the ICC are non-est, without jurisdiction and initiative of the principles of natural justice and the procedure established by law.
5. **Objections** to the petition have been filed by the official respondents as well as private respondent to the petition.
6. **In the objections** filed by official respondents 1 to 3, the petition is being opposed on the premise that petitioner herein came to be legally and validly proceeded against by the ICC in terms of the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 (for short the Act of 2013).
7. In the objections filed by respondent 4 herein, the petition is being resisted on the ground that the petition is not maintainable as no decision against the petitioner has been taken by the competent authority upon the recommendation made by the ICC while admitting the fact that the FIR came to be registered by answering respondent against the petitioner herein for commission of offenses under Section 354 RPC, and that in the trial of the said FIR before the court of Chief Judicial Magistrate, Srinagar, at no point of time the answering respondent was summoned as witnesses and that in fact the petitioner had assured the answering respondent that he would not harass her, when the matter was under consideration before the official respondents and on the basis of the said assurance, the answering respondents came to be

requested by the petitioner herein not to proceed ahead with the complaint and yet thereafter, the petitioner herein continued to harass the answering respondent and teas her, necessitating the filing of case against him before the Police.

Heard counsel for the parties and perused the record.

8. Mr. Tasaduq H. Khawaja, appearing counsel for the petitioner herein while making his submissions would at the very outset contend that the complaint filed by respondent 4 herein under the provisions of the Act of 2013 dated 16th October, 2017, in respect of the alleged incident referred in the complaint dated 25th of April, 2016, could not have been taken cognizance of by the ICC in view of Section 9 (1) proviso 2 which envisages that an aggrieved woman may make a complaint in writing of sexual harassment at workplace to the Internal Committee within a period of 3 months from the date of incident and in case of series of incidents within a period of 3 months from the date of last incident and in terms of the proviso 2 appended to sub-section (1), the said period of 3 months for making the complaint has been made extendable to a further period of 3 months provided the circumstances suggest that the woman was prevented from filing the complaint within the said period.

Mr. Khawaja would further contend that besides the said legal infirmity in the complaint filed by respondent 4 herein against the petitioner herein under the Act of 2013, on merits, said complaint as well could not have been dealt or proceeded with against the petitioner herein in view of the acquittal earned by the petitioner herein from the Court of Chief Judicial Magistrate, Srinagar

arising out of FIR 47/2017, having got registered by respondent 4 herein against the petitioner herein regarding the same alleged incident of sexual harassment.

9. Mr. Omar Rashid, appearing counsel for respondents 1 to 3, as also Mr Z. A. Qureshi, Senior Advocate appearing counsel for respondent 4 herein, while responding to the submissions of Mr. Khawaja, would submit that the acts of sexual harassment had been committed by the petitioner herein against the respondent 4 herein regularly and one such incident dated 25.04.2016 had been referred in the complaint filed by respondent 4 herein, however, not disputing and denying the fact that the formal complaint before ICC came to be filed on 16th of October 2017, whereupon the ICC proceeded to make a recommendation on 25th of February 2021.

The appearing counsel for the respondents would also submit that the recommendations of the ICC were made upon holding of a full-dressed inquiry into the matter while associating the petitioner herein the said proceedings.

10. In view of the aforesaid rival submissions of appearing counsel for the parties, this Court deems it appropriate in the first instance to address to the preliminary objections raised by appearing counsel for the petitioner, to the maintainability of the complaint filed by respondent 4 herein before the ICC beyond the period of limitation prescribed under Section 9 of the Act of 2013

11. A reference to section 9 of the Act 2013 becomes as such, imperative and same reads as under:

9. Complaint of sexual harassment (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

12. Keeping in mind the aforesaid provisions of section 9 and coming back to the case in hand, the perusal of the record available on the file in general and copy of the complaint filed by respondent 4 herein before ICC, forming annexure VIII to the petition, would reveal that the said complaint at para 4 has specifically referred to the incident dated 25th of April 2016, alleging that on the said date the modesty of the complainant, respondent 4 herein, came to be outraged by the petitioner herein and though the complainant, respondent 4 herein, had been requesting the officials to initiate action against the petitioner herein, but no action was taken and that the complainant, respondent 4 herein, waited for so long, but the long waiting by her yielded no results, compelling her, the respondent 4 herein to approach the police station for taking an action against the petitioner herein and got the FIR registered

against the petitioner herein, being FIR 47/2017 for offences under Section 354 RPC.

13. Perusal of the record also indisputably tends to show that the petitioner herein in the said FIR stands acquitted after having been subjected to a trial before the Court of Chief Judicial Magistrate, Srinagar on 16th of September 2018.
14. Record also reveals that the respondent 4 herein admittedly filed the complaint before ICC on 16th of October 2017 in respect of the alleged incident dated 25th of April 2016, much beyond the period prescribed for filing such complaint under Section 9 of the Act of 2013.
15. Under these circumstances, the complaint filed by respondent 4 herein against the petitioner herein under the Act of 2013 on 16th of October 2017 regarding an alleged incident dated 25th of April 2016 indisputably could not have been either entertained or else taken cognizance of by the ICC and dealt with thereafter. This position of law has also been held by the Division Bench of the High Court of Kerala, in case titled as “**K. Reeja Parambath Naaluthara Vs. Pradeep T. C. and Ors**”. reported in **2017 SCC Online Ker 10625** wherein at para 10, it has been held, that the authority under the Act of 2013, had no power to act upon a complaint and pass orders thereon filed before it, beyond the condonable period of limitation of 3 months provided under proviso 2 of Section 9(1).
16. Thus, the preliminary objection qua the maintainability of the complaint filed by respondent 4 herein against the petitioner herein before ICC raised by counsel for the petitioner, is found to be

legally sustainable rendering the impugned complaint filed by respondent 4, taken cognizance of by the ICC, and the recommendation made therein illegal and invalid on the basis of settled position of law that if a statute requires a thing to be done in a particular manner, that thing has to be done in that manner alone.

17. Having held the complaint in question non-maintainable and proceedings initiated thereon invalid, the rest of the grounds urged by the petitioner herein in the instant petition against the complaint inasmuch as the proceedings conducted thereon by the ICC including the recommendations made thereof pale into insignificance and need not be adverted to.
18. The instant petition accordingly is allowed and consequently the complaint dated 25th of April, 2016 filed by responded 4 against the petitioner herein before the ICC, along with recommendations made thereon by the ICC shall stand quashed.
19. Disposed of.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

28.11.2024

Ishaq

Whether the order is speaking? Yes/No

Whether approved for reporting ? Yes/No