

(2019) 09 UK CK 0114
Uttarakhand High Court
Case No: Writ Petition (S/B) No. 445 Of 2019

Gurudev Singh

APPELLANT

Vs

State Of Uttarakhand
And Others

RESPONDENT

Date of Decision: Sept. 18, 2019

Acts Referred:

- Prevention, Prohibition And Redressal) Act, 2013 - Section 19, 19(h), 19(i), 26(1)(c)
- Code Of Criminal Procedure, 1973 - Section 154(1), 173
- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Ramesh Ranganathan, CJ; Alok Kumar Verma, J

Bench: Division Bench

Advocate: Rakesh Thapliyal, Mukesh Kapruwan, Anil Kumar Bisht

Final Decision: Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This Writ Petition is filed seeking a writ of certiorari to quash the letter issued by the Joint Secretary dated 04.09.2019 instructing the Chief

Engineer/Head of the Department to lodge an F.I.R. against the petitioner followed by the letter of the Chief Engineer/Head of the Department dated

07.09.2019 addressed to the Executive Engineer, and followed by the letter issued by the Executive Engineer dated 07.09.2019 addressed to the Circle

Officer, Police Station Barkote to lodge an F.I.R. against the petitioner. A writ of certiorari is also sought to quash the order dated 16.08.2019,

whereby the petitioner was placed under suspension.

2. The petitioner, an Assistant Engineer, Minor Irrigation, Sub-Division Naogaon, District Uttarkashi, invoked the jurisdiction of this Court questioning

both the order of his suspension, and the order by which a direction was given to lodge a complaint against him for sexual harassment of a lady employee.

3. On the basis of a complaint, given by a woman working in the Office, where the petitioner was working as an Assistant Engineer, proceedings

were initiated against the petitioner under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (for

short the "2013 Act". An Internal Committee was constituted to inquire into the matter. The said Committee recorded the statements of both the

victim and the petitioner, besides other employees. In its report, the Committee recorded its conclusion that the complaint could not be said to be

baseless. The said Inquiry Report, of the Internal Committee, appears to have been submitted to the officials concerned, resulting in the petitioner

being initially placed under suspension and, thereafter, a direction being issued to lodge a complaint against him.

4. The victim relied on a WhatsApp message, exchanged between the petitioner and her, which discloses the petitioner having expressed his love for

the victim and, despite the victim informing the petitioner that she was like his daughter, he is said to have replied that everything was fair in love and

war. The fact that this message was sent from the petitioner's mobile-phone, to the victim's mobile-phone, is not in dispute. The petitioner,

however, claims that the victim had borrowed his mobile-phone and had, surreptitiously, sent the message from the petitioner's mobile-phone to

her own mobile-phone; and it is he who has been victimized, and not the victim lady. These are all matters to be examined in the disciplinary inquiry to

be conducted, consequent on disciplinary proceedings having been initiated against the petitioner, and his being placed under suspension.

5. Mr. Rakesh Thapliyal, learned Senior Counsel appearing on behalf of the petitioner, would submit that the procedural requirements of the 2013 Act

have not been complied with; a copy of the Internal Committee's report ought to have been made available to the petitioner and his objections

should have been sought thereto; that has not been done; and, on the basis of a report submitted behind the petitioner's back, he has been placed under suspension; and an F.I.R. has been directed to be lodged against him.

6. When we asked Mr. Rakesh Thapliyal, learned Senior Counsel appearing on behalf of the petitioner, whether the provisions of the 2013 Act barred

a complaint being lodged for a criminal offence, merely because proceedings had been initiated, for sexual harassment under the 2013 Act, learned

Senior Counsel would submit that, since the provisions of the 2013 Act have been invoked, it is only after conclusion of proceedings, under the 2013

Act, can proceedings be initiated thereafter against him; in the present case the victim has not lodged any complaint; it is the government officials who

have directed that a complaint be lodged against the petitioner; and, consequently, the action of the respondents in not adhering to the procedural

requirements of the 2013 Act, before initiating action against the petitioner, is illegal and wholly unjustified.

7. Even if we were to proceed on the premise that the proceedings, initiated under the 2013 Act, have not yet culminated, and that the petitioner is

entitled, under the 2013 Act, to file his objections to the Inquiry Report, that does not mean that no criminal complaint can be lodged against a

government servant for sexual harassment, and no action can be taken against him for such misconduct under the Service Rules.

8. Section 19, in Chapter VI of the 2013 Act, prescribes the duties of the employer and, under Section 19(h), every employer shall cause initiation of

action, under the Indian Penal Code, or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where

the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place. Section 19(i) of the 2013 Act obligates

every employer to treat sexual harassment as a misconduct under the Service Rules, and initiate action for such misconduct. Section 26(1)(c) of the

2013 Act makes the employer, who contravenes the provisions of the 2013 Act, punishable with fine which may extend to fifty thousand rupees.

9. The mere fact that disciplinary proceedings have been initiated against the petitioner does not mean that he is guilty of misconduct, for his guilt or

otherwise can only be established in a properly constituted disciplinary inquiry. An order of suspension is passed where a, prima facie, case of misconduct is made out. The WhatsApp messages on record would suffice, as a justification, for the employer to place the petitioner under suspension. In the absence of any prohibition under the 2013 Act, the action of the respondent-authorities, in directing an F.I.R. to be registered against the petitioner, does not also necessitate interference.

10. Under Section 154(1) of the Criminal Procedure Code, every information, relating to the commission of a cognizable offence, if given orally to an officer in-charge of a police station, shall be reduced to writing by him, or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in that behalf.

11. The act of reducing a complaint, relating to the commission of a cognizable offence, into writing is colloquially referred to as the F.I.R. It is only after such a complaint is registered, is the Investigating Officer entitled to commence investigation and, on conclusion thereof, to file a report under Section 173 of the Cr.P.C. Mere registration of a complaint has no adverse consequences, justifying the petitioner invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, more so as the proceedings disclose, prima facie, the commission of an offence of sexual harassment. The petitioner cannot be heard to contend that no complaint should be registered against him, and disciplinary proceedings should not be initiated, for such grave and serious allegations of sexual harassment.

12. While we may not be understood to have expressed any opinion on the petitioner's guilt or otherwise, suffice it to observe that the action, initiated by the authorities concerned, both by placing him under suspension, and in directing an F.I.R. to be lodged against him, do not necessitate interference in the exercise of the discretionary jurisdiction of this Court under Article 226 of the Constitution of India.

13. A writ of mandamus and a writ of certiorari are discretionary, unlike a writ of habeas corpus which can be sought as a matter of right. One of the

principles inherent is that the exercise of discretionary power should be for the sake of justice and, if interference would result in greater harm to

society, then this Court may refrain from exercising the power. (State of Maharashtra v. Prabhu reported in (1994) 2 SCC 481). The jurisdiction

which this Court exercises, under Article 226 of the Constitution of India, is discretionary and interference is justified only in furtherance of the interest

of justice. The interest of justice and the public interest coalesce. They are very often one and the same. The Court has to weigh public interest vis-

À-vis private interest while exercising its discretionary powers. (Ramniklal N. Bhutta v. State of Maharashtra reported in AIR 1997 SC 123;6

Manohar Lal v. Ugrasen & others reported in (2010) 11 SCC 557; Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkison Pvt. Ltd reported in

(2005) 6 SCC 138; Air India Ltd. v. Cochin International Airport Ltd. reported in (2000) 2 SCC 617). This Court would refrain from interference save

larger public interest.

14. Even if a legal flaw might be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public

importance is involved. (Rashpal Malhotra v. Mrs. Saya Rajput reported in AIR 1987 SC 223 5and Council of Scientific and Industrial Research v.

K.G.S. Bhatt reported in AIR 1989 SC 1972.) Even when some defect is found in the decision-making process, this Court would exercise its

discretion with great caution and only in furtherance of public interest, and not merely on the making out of a legal point. Only when it comes to the

conclusion that overwhelming public interest requires interference, should it intervene. (Air India Ltd. v. Cochin International Airport Ltd. reported in

(2000) 2 SCC 617). One of the limitations imposed by this Court, on itself, is that it would not exercise jurisdiction unless substantial injustice has

ensued or is likely to ensue. It would not allow itself to be turned into a Court of appeal to set right supposed errors of law which do not occasion

injustice. (Sangram Singh v. Election Tribunal, Kotah reported in AIR 1955 SC 425).

15. An inquiry, into such grave and serious allegations of sexual harassment, must be held for the truth to come out. This Court would be wholly

unjustified in interdicting any such inquiry. Merely because disciplinary proceedings have been initiated against him, the petitioner cannot claim to have

suffered substantial injustice necessitating interference by this Court.

16. We see no reason, therefore, to interfere with the orders impugned in the Writ Petition. The Writ Petition fails and is, accordingly, dismissed. No

costs.

17. Let a certified copy of this order be issued to the parties, on payment of the prescribed charges, by 20.09.2019.