

a 15. It is also settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. The power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused. [See: *Ghurey Lal vs. State of Uttar Pradesh, (2008) 10 SCC 450*].

b 16. In view of the above, the present leave petition, being bereft of merit, is dismissed.

Result:- Leave petition dismissed.

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ABC 2020 (I) 105 DEL
ACQUITTAL & BAIL CASES
HIGH COURT OF DELHI

(Suresh Kumar Kait, J.)

d

CrI.M.C. 4060/2019 & R.I.M.A.33702/2019 & 36891/2019

Decided on 6 December, 2019

MANMOHAN SHARMA & ORS.

- *Petitioner(s)*.

Versus

e

STATE & ANR.

- *Respondent(s)*.

f **Law Covered:-** (A) *Indian Penal Code, 1860 – Sections 354 & 354-B – Outraging modesty of a woman – failure to report incident at first available opportunity – no whisper about the allegation of outraging the modesty of the complainant by the petitioners – the complaint was lodged after 1½ hours of the incident – Professional background of complainant – The complainant a qualified journalist – Held, Had any incident happened regarding her womanhood, she would have mentioned that fact very strongly at the first instance – Acquittal. (Para 13)*

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h (B) *Indian Penal Code, 1860 – Sections 354 & 354-B – Outraging modesty of a woman – Alleged “torn shirt” – not seized by the police – Held, in absence of same, offence u/s 354/354-B cannot be proved. (Para 13)*

h

Facts:- *As per the FIR, it was alleged that on the relevant day, the respondent-2 along with her staff went to supervise the distribution of magazines in a residential colony. Her staff member was stopped by the guard at the gate. She asked the guard as to why the staff was not being allowed to distribute the magazines. The guard in the meantime called some*

persons to the spot. Thereafter, her staff was manhandled by all the persons present there and they snatched his phone away and threw it on the ground. When she protested, she was also manhandled and assaulted by all the persons present there, including the petitioners. In the complaint filed by her there was no whisper about the allegation of outraging the modesty of the complainant, whereas, in the complaint filed subsequently under Section 200/202 Cr.P.C. such allegations were made. It was observed by the honourable High Court that the complainant is qualified journalist. Had any incident happened regarding her womanhood, she would have mentioned that fact very strongly at the first instance. The offence u/ss 354/354-B was held to be not proved.

Held:- However, undisputed fact is that complaint was filed by the complainant/respondent no.2 with the police station Vasant Kunj dated 06.11.2016 about the alleged incident, but there is no whisper about the allegation of outraging the modesty of the complainant by the petitioners and admittedly, the complaint was lodged after 1½ hours of the incident. The complainant is qualified journalist. Had any incident happened regarding her womanhood, she would have mentioned that fact very strongly at the first instance i.e. in complaint dated 06.11.2016, but there is no whisper of such allegations. Moreover, her alleged “torn shirt” mentioned in complaint filed under Section 200 Cr.P.C. has not been seized by the police. In absence of same, offence under Section 354/354-B cannot be proved. (Para-13)

Counsel:- For Petitioner(s): Mr. Meet Malhotra, Mr. Kushank Singh, Mr. Abhinav, Mr. Yashovardhan & Mr. Syed Massod, Advs.
For Respondent(s): Mr. K K Ghai, Mr. Sunny Sharma, Mr. Rahul Gupta, Advs.

Cases Referred:-

1. Vineet Kumar and Ors. vs. State of U.P. and Ors., (Para-7)
2. State of Haryana v. Bhajan Lal, (Para-7)
3. Inder Mohan Goswami and Ors. vs. State of Uttaranchal and Ors., (Para-8)

JUDGMENT

SURESH KUMAR KAIT, J.: - 1. Vide the present petition, the petitioners seek directions thereby to quash the FIR No.576/2016 dated 02.12.2016, registered at P.S. Vasant Kunj North, Delhi for the offences punishable under Sections 323/ 341/354/354B/509/34 IPC and consequent proceedings emanating therefrom.

January 2020

2. The case of the petitioners is that they are residents of Sector-
a A, Pocket-B & C, Vasant Kunj, New Delhi and respondent no.2 is the
complainant in the FIR mentioned above, filed against the petitioners.
As per the FIR, it is alleged that on 06.11.2016 at around 08:30 AM, the
respondent-2 along with her staff went to supervise the distribution of
magazines in Vasant Kunj. Her staff member, namely; Deepak Chand
b was stopped by the guard at the gate of Pocket A Sector B & C.
Accordingly, she asked the guard as to why the staff was not being
allowed to distribute the magazines. The guard in the meantime called
some persons to the spot. Thereafter, her staff was manhandled by all
the persons present there and they snatched his phone away and threw
c it on the ground. When she protested, she was also manhandled and
assaulted by all the persons present there, including the petitioners.

3. Mr. Meet Malhotra, learned Senior Advocate appearing for
the petitioners submits that without appreciating the background and
d the inherent improbable nature of the accusations, an FIR was
registered and a chargesheet was filed subsequently for the offences
punishable under Sections 323/341/354/354B/509/34 of IPC. The
charge sheet does not even *prima facie* disclose the commission of
cognizable offence. However, despite the same, Ld. Metropolitan
e Magistrate chose to take cognizance of the offences as detailed vide
order dated 19.09.2018. Moreover, even if the contents of the charge
sheet as well as the FIR are taken at face-value, they do not contain
any direct allegations of cognizable offence which has been
committed by them. FIR is completely false and motivated to silence
f the petitioners who have always been vocal about opposing the
distribution of "Yellow Pages" in the colony by the respondent No.2
and/or her employees or agents.

4. It is further submitted that respondent no.2, for a very long
g time, has been indulging in a lot of vexatious correspondence/
complaints to the concerned police authorities with a view to harass
the petitioners so that the petitioners concede to her illegally
untenable demands of supplying / distributing the magazines in the
Vasant Kunj area. The respondent no.2 had also filed a Writ Petition
h (Civil) bearing No. 1101/2017, before this Court wherein she prayed
for an order that her magazines are distributed in the entire Vasant
Kunj area and areas in its vicinity, without any hassle. The
respondent no.2, in the Writ made the following prayer:-

*"Issue appropriate writ in the nature of mandamus directing
the respondents to allow the free circulation and distribution of the*

monthly publication of the petitioner's "Vasant Kunj Informer and Shopper" amongst residents of all sectors of Vasant Kunj every month, unhindered, without any objection or complaint." a

5. The said petition was disposed of vide order dated 05.04.2019 and the relevant portion thereof is reproduced hereunder:-

"8. ... the present petition is allowed and the petitioner is permitted to circulate and distribute the monthly publication in question without any hindrance from the respondents. It is further clarified that in the event that there is any complaint regarding the conduct of the persons distributing the said publication, the respondents are not precluded from filing an appropriate complaint with the concerned authorities. b c

9. If any of the residents communicates to the petitioner that he/she does not want to receive the said publication, then the petitioner shall honour the said request." d

6. Learned senior counsel submits that the present dispute is nothing but a civil dispute which has been given the colour of criminality in order to wrongly gain profit from a civil disagreement. The present proceedings are nothing but misuse and abuse of the process of Court which attract the inherent power of the High Court under Section 482 of the Cr.P.C. e

7. To strengthen his arguments, learned senior counsel has relied upon the decision of the Hon'ble Supreme Court of India in the landmark case of *Vineet Kumar and Ors. vs. State of U.P. and Ors.* (31.03.2017-SC): MANU/SC/0351/2017 wherein the Hon'ble Court pleased to hold: f

" Inherent power given to the High Court under Section 482 Code of Criminal Procedure is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal*. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there is material to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction Under Section 482 Code of g h

a *Criminal Procedure to quash the proceeding under Category 7 as enumerated in the case of State of Haryana v. Bhajan Lal, which is to the following effect:*

b *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."*

c 8. He further submits that since the instant proceedings have been initiated only for seeking personal vendetta and to mount pressure on the petitioners, therefore, it is liable to be quashed. He has placed reliance on *Inder Mohan Goswami and Ors. vs. State of Uttaranchal and Ors. (09.10.2007 - SC) : MANU/SC/7999/2007*:
d wherein it was held that "the court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure the accused." He thus submits that the continuance of criminal proceedings against the petitioners would not serve any purpose, other than to cause severe hardship and unnecessary prejudice to them in the matter and will have to face the ordeal of facing the trial unnecessarily.

e 9. Learned counsel lastly but strongly submits that in the handwritten complaint dated 06.11.2016 made by the respondent no.2, she has nowhere mentioned about the alleged outraging of her modesty by the petitioners, whereas, in the complaint filed
f subsequently under Section 200/202 Cr.P.C. she has stated that while her field staff namely Deepak Chand was trying to make video recording of the entire episode, the petitioners started hurling abuses on him and manhandled him to snatch his mobile. The relevant portion of the said complaint reads as under:-

g "On 6.11.2016 at around 8.30 a.m. the complainant had gone to supervise the distribution of the magazine at the locality at Sector A, pocket B & C, Vasant Kunj along with her distribution/
h field staff. One security guard of Sector A, pocket B & C present there at the entry gate namely Surinder stopped her staff and did not allow them entry, stating that he has been so instructed by the office bearers of the RWA to not allow the distribution of yellow pages magazine in the complex and not allow entry to the staff engaged by the yellow pages magazine. Upon query as to the reason of this obstruction when they were carrying police verification certificates and were not in a manner disturbing the peace of the residents, the

guard Surinder hurled abuses at the field staff Deepak Chand and pushed him away. Having faced such hostile action at the hands of the security guard, the field staff Deepak Chand immediately informed the complainant who was going to drop the other field staff to another location. The complainant returned to the spot and again asked the reason why her magazine was stopped from being distributed. Surinder, while using abusive language with her also, stated that "Geetha Madam" has instructed him to not allow the distribution of yellow pages magazine in the complex. Surinder telephonically called few residents to the entry gate and within a matter of 2- 3 minutes, one R. C. Sridhar, Manmohan Sharma, Geetha Viveknandan and Amit Agarwal, along with 2-3 more persons, came to the entry gate and started hurling abuses at the complainant as to how they had dared to come there and said that they will not allow distribution of this magazine unless a monthly payment of Rs 10,000/- is made to them. "We need money for running our RWA" one of them stated. The RWA President Mrs. Geetha Vivekanandan told the complainant that she was clearly informed by Mr. Bhanu Bishnoi, Chairman of the Federation of RWAs of Vasant Kunj, that money has to be paid by the yellow pages on a monthly basis for distribution. Facing this extortionist attitude at the hands , of the accused persons, the complainant reminded Mrs. Geetha that at the Federation Meeting held on 24th of July, 2016, Mr. Bishnoi had clearly stated in the presence of the 50-60 odd members that there was no question of any money being demanded by any RWA for the distribution of the yellow pages and only the gate passes would be made by whichever RWA that required the same. However, Mrs. Geetha did not pay heed to the complainant and insisted that extra money needs to be paid for allowing entry for distribution in the sector. The complainant reminded Mrs. Geetha that in pursuance with the requirement set forward by her RWA to get passes made of Sec A, pocket B & C had already taken a sum of Rs.1,200/- on 04.08.2016 vide Receipt No. 7723 for issuing annual gate passes for six staff, which the RWA had not issued even after several requests, hence their coming for distribution' was justified on the basis of the receipt. .The complainant also tried to reason that any money, other than that for the gate pass, which they were asking for distribution of this magazine is outrightly illegal as they have no justification for hindering this bonafide occupation and putting such a condition for distribution of this magazine as it is only meant for the residents of the locality giving them the contact details of service

a providers and other household and daily facilities and similar useful
information which as stated in our constitution is a basic right - the
right to information and in no manner should be obstructed as it has
no concern with the RWAs and the distribution of this monthly
magazine is done in a very peaceful manner within a period of one to
two hours only once in a month by staff who have undergone due
b police verification and Delhi Police has issued Police Clearance
Certificate to all the staff who are engaged in this distribution.

c While this conversation was going on with the accused, the
accused tried to shout down the complainant, they suddenly in a
split second rushed to the side to pounce Deepak Chand who was
trying to make video recording of the entire episode and started
hurling abuses on him and manhandled him to snatch his mobile.
The complainant went to his rescue and tried to reason with the
accused not to hurt the staff. The accused persons without even
d caring to reason or a dialogue resorted to most uncivilized and
criminal behaviour. Accused no. 2 at the instigation of accused no.3
pushed the complainant by hitting on her chest and shoulder and as
a result she fell on a car, as a result of which the complainant blacked
out for a moment, kept requesting them to "give her a moment" to
gain her balance, but they did not stop. Accused no.2 and 3 snatched
e the phone from the field staff Deepak Chand and broke the same.
However when the complainant tried to gain balance, accused no. 1
and 2 pushed her away holding her arm and threatened her that she
should not be seen in the vicinity lest she might have to face dire
f consequences for the same. As a result of this criminal assault the
kurta worn by the complainant got the neck. They threatened to
implicate the staff in theft and proclaim them as "terrorists." The
field staff Mr Peepak Chand who came forward to help the
complainant was also roughed up by the accused persons mercilessly.
g They got into a verbal abusive fight with a senior citizen and
resident Mrs. Achla Bhandari who came forward to help the
complainant. The complainant, on gaining composure, immediately
called police at no. 100 and in pursuance to her call one constable
Mr. Paramveer and later Mr Deen Dayal, ASI came to the spot. The
h police personnel after coming to the spot did not take any action
against the accused persons nor did they care to take the complainant
to the hospital for immediate medical attention as according to them,
there was "no bloodshed." All they said was the complainant could
write and give in a complaint to the local police on her own accord.
The complainant filed a complaint at the local police station. The

police has failed to take action as per legal norms and duty cast upon them and have sided with the accused persons and has failed to take action against culprits as per law." a

10. This Court specifically asked the complainant, who is present in Court, as to why in the complaint dated 06.11.2016 there was no whisper about outraging of her modesty by the petitioners? To which, replied that she had filed a written complaint on 06.11.2016 about the alleged incident and thereafter she checked that her shirt was torn and thus, she mentioned the aforesaid facts in her subsequent complaint filed under Section 200/202 Cr.P.C. before the Metropolitan Magistrate. Further submits that she is not a lawyer and is only a journalist and is therefore, not aware as to what are the contents of outraging of modesty. b c

11. It is not in dispute that the charge sheet has been filed by the police and statements of Ct. Paramveer and ASI Deen Dayal have been recorded under Section 161 Cr.P.C. wherein they stated that the complainant had not told them about any alleged outraging of her modesty by the petitioners. d

12. The fact remains that, in the written complaint dated 06.11.2016, the complainant had specifically mentioned about the incident that took place, i.e., manhandling of her staff by a guard and two-three other persons and despite the President of the said area being present at that time, did not intervene to protect them. Thus, incident had taken place, accordingly, FIR has been lodged. e

13. However, undisputed fact is that complaint was filed by the complainant/respondent no.2 with the police station Vasant Kunj dated 06.11.2016 about the alleged incident, but there is no whisper about the allegation of outraging the modesty of the complainant by the petitioners and admittedly, the complaint was lodged after 1½ hours of the incident. The complainant is qualified journalist. Had any incident happened regarding her womanhood, she would have mentioned that fact very strongly at the first instance i.e. in complaint dated 06.11.2016, but there is no whisper of such allegations. Moreover, her alleged "torn shirt" mentioned in complaint filed under Section 200 Cr.P.C. has not been seized by the police. In absence of same, offence under Section 354/354-B cannot be proved. f g h

14. Accordingly, I hereby quash only sections 354/354B IPC against the petitioners. However, the trial shall continue against the petitioners under the rest of sections.

15. With these observations, the present petition stands disposed of along with the pending applications.

Result:- Offences u/ss 354/354-B IPC quashed.

**ABC 2020 (I) 113 DEL
ACQUITTAL & BAIL CASES
HIGH COURT OF DELHI**

(Vibhu Bakhru, J.)

Crl.A. 828/2019 & Crl.M.(Bail) 1257/2019

Decided on 15 November, 2019

KAILASH MEHTO

- Appellant(s).

Versus

STATE

- Respondent(s).

Law Covered:- (A) *Indian Penal Code, 1860 – Sections 392, 394 & 397– Conviction under – Case of the prosecution seriously doubtful Recovery of weapon – Doubt regarding the recovery of the knife – Time & place of incident– doubtful – standard of proof not being met– acquittal. (Para 37)*

(B) *Indian Evidence Act, 1872 – Section 3 – Relevant fact – Failure to join Public witness – the accused was apprehended by public but none of the public witnesses was examined – fatal to prosecution. (Para 36)*

(C) *Indian Evidence Act, 1872 – Section 3 – Relevant fact – Identification – Test identification parade – the appellant was shown to the complainant – Complainant could not identify the other assailants – fatal to prosecution. (Para 36)*

Held:- It is also important to note that none of the public witnesses were joined in the investigation. Although, it is prosecution's case that the appellant was apprehended by public but none of the public witnesses have been examined. Much evidentiary value is attributed to the fact that the appellant was identified by PW3. However, it is relevant to note that the appellant was shown to the complainant at the police station. In addition, it is also material to note that the Complainant could not identify the other two assailants (who were apprehended pursuant at the disclosures stated to have been made by the appellant) in a TIP. (Para-36)