

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Miscellaneous Application No.S-581 of 2018.

Date of hearing: 10.10.2022

Date of decision: 10.10.2022

Applicants: Amir Saeed and ArshadSaleem through Mr. Ishrat Ali Lohar and Mr. Adnan ShakeelShaikh advocates.

Complainant: Through Mr. Ali Ahmed Palh advocate.

The State: Through Mr. ShahzadoSaleemNahiyoon, Additional Prosecutor General, Sindh.

ORDER

MUHAMMAD IQBALKALHORO, J:- Mst. Farzana, a student of M.A. English (Final semester) in Shaheed Benazir Bhutto University, ShaheedBenazirabadmoved an application to SSPShaheedBenazirabad against her teacherAamirSaeed and Vice Chancellor ArshadSaleem for causing her sexual harassment. She has particularly named her teacher AamirSaeed for making personal comments, praising her beauty, her dress etc. to make her case.And that when she complained against him to the Vice Chancellor, he took no action against him and instead himselfstarted sexually harassing her. In the investigation,she however could not substantiate her allegations and the case was disposed of under "B" Class by the Investigating Officer.But when he submitted report before SSPconcerned for approval he ordered disposal of the case under "C" Class. When Investigating Officer submitted such a report before the Magistrate concerned, he did not agree with disposal of case and has taken cognizance of the offence instead vide order dated 03.10.2018, impugned in this application.

Meanwhile, since allegations were serious in nature, a Board, headed by Prof. Dr. Abdul Qadeer Rajput Chartered Inspection & Evaluation Committee and comprising SohailAnwerBaloch Deputy Secretary Universities and Board Department, AnwerSher Deputy

Commissioner NoushehroFeroz and Prof. Dr. PaveenMunshi Vice Chancellor, University of Sufism and Modern Sciences at Bhit Shah, was constituted for an inquiry into the allegations against the applicants. There also complainant could not prove her allegations and the Board in its report dated 10.09.2018 has exonerated the applicants of the charges. Meanwhile, applicants filed this application against impugned order and when this matter was taken up on 20.12.2021, with consent of advocates appearing for parties, Ms. Suhai Aziz Talpur SSP and Mr. Siraj Ahmed Lashari DSP were appointed as investigating officers to conduct (re) investigation into the matter within a period of one month and submit report. They have submitted report in compliance thereof and conclusion of which reads as under:-

“1. Mst. FarzanaJamali and her witnesses did not provide any concrete evidence regarding their allegations of sexual harassment etc. against the accused Amir Saeed and ArshadSaleem.

2. AijazJamali father of complainant and other relatives tortured Amir Saeed (accused) and his brother. As result Amir Saeed (accused) got registered an FIR No.39/2018 u/s 324, 147, 148, 506, 504, 427 PPC at PS Taluka Nawabshah against AijazJamali and six unknown accused. AijazJamali was arrested by the police.

3. The complainant Mst.FarzanaJamali in order to settle the score got registered the FIR No.40/2018 u/s 509(i), (ii), 506, 34 PPC of PS Taluka Nawabshah leveling false and baseless allegations against Amir Saeed and ArshadSaleem. The complainant's this act defamed the pious profession and educational institute. Therefore, the case found false and liable to be quashed.”

While all this was going on, complainant approached Provincial Ombudsman “the Protection against harassment of women at the workplace” and filed a complaint against applicants. In the complaint, evidence of victim and other witnesses was recorded and full opportunity was afforded to her to substantiate her allegations. But, she having failed to prove anything as alleged against the applicants, the said complaint was dismissed by a decision dated 15.05.2019, a copy of which has been brought on record by the counsel for applicants. Now, it appears that complainant has failed to establish her allegations before four forums i.e. (1). before Investigating Officer, (2). before the Board constituted by University itself for probing the matter, (3). in (re) investigation ordered by this Court by two senior Police Officers, and (4). before Provincial Ombudsman Sindh. Notwithstanding, learned counsel appearing for

complainant has opposed this application on the ground that the case may be allowed to be tried on the basis of 161 CrPC statements of witnesses and the account narrated by complainant herself. His arguments have been supported by learned Addl. PG.

Be that as it may, in the present case, there is no witness to allegation of harassment except victim herself, evidence of other witness cited by her in her complaint including her father is hearsay, at the most, based on information conveyed to them by complainant herself. But as stated above she in support of her allegations, has not succeeded in bringing any tangible material as such, except her own word which has failed to withstand the test applied by four forums separately. It is also not out of place to mention here that before registration of FIR, applicant Aamir Saeed had already registered an FIR against, among others, father of victim bearing Crime No.39/2018 u/s 324, 147, 148, 506, 504, 427 PPC at PS Taluka Nawabshah. The senior police officers in report of (re)investigation have opined that the case filed by the complainant is merely a backlash of that case for settling score with the said teacher.

No doubt the Magistrate has powers to disagree with the negative opinion of the Investigating Officer and take cognizance of the offence against the accused. However, in order to reach a different conclusion than what has been recommended, he has to give reasons, based on examination of material, influencing his mind to take a contrary view. In this case learned Magistrate in the impugned order has simply referred to his powers to disagree with the opinion of the Investigating Officer, besides quoting statements of witnesses u/s 161 CrPC, without however, disclosing the version narrated by such witnesses and its relevance. Therefore, I am of the view, that when learned Magistrate disagreed with the opinion of Investigating Officer, he had no material before him to take a contrary view. In the circumstances, this criminal miscellaneous application is allowed and impugned order dated 03.10.2018 is hereby set-aside and the case is disposed of under "C" Class as recommended.

JUDGE