THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.15145 of 2019 and
W.M.P.Nos.15129 and 15130 of 2019

Samuel Tennyson ... Petitioner

-vs-

1. The Principal & Secretary,
   Madras Christian College (Autonomous),
   Tambaram East, Chennai-600 059.
   India.

2. The Convenor,
   Committee of Enquiry / Internal Complaints Committee
   (Gender Sensitization and Prevention of Sexual Harassment of
   Women in Work Place, MCC)
   Madras Christian College (Autonomous),
   Tambaram East, Chennai-600 059. India. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the "Finding of Fact" given by Committee of Enquiry (Internal Complaints Committee), Madras Christian College - Tambaram, dated 17th April, 2019, in so far as the petitioner is concerned, on the file of the second respondent and the consequential Second Show Cause Notice dated 24th May 2019 on the file of the first respondent and quash the same.

For Petitioner : Mr.V.Vijay Shankar
For R1 : Mr.John Zachariah
For R2 : M/s.Sai Raaj Asso.

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O R D E R

This Writ Petition has been filed, seeking to quash the "Finding of Fact" report of the Committee of Enquiry (Internal Complaints Committee), Madras Christian College – Tambaram / 2nd Respondent herein dated 17.04.2019, by which, it was stated that there was a sexual harassment by the Petitioner. The Petitioner also sought to quash the consequential Second Show Cause Notice dated 24.05.2019.

2. The case of the Petitioner was that he had joined the 1st Respondent College as Assistant Professor in the Zoology Department on 13.06.2011 and was brought under regular pay scale, thereby conferred the status Government employee. In the month of January, 2019, a study tour between 09.01.2019 and 14.01.2019, was arranged for the students of Zoology Department and 42 students were taken to Bangalore, Mysore and Coorg, accompanied by seven faculty members, namely, the petitioner herein, Dr.Raveen, Dr.Allen J.Freddy, Mr.E.Thulukkanam, Dr.Anulin Christudhas and Dr.K.Dhinamala.

3. It was the further case of the Petitioner that pursuant to an anonymous communication received by the 1st Respondent herein, levelling

certain allegations against the Petitioner and Dr.Raveen, an enquiry was conducted and thereafter, on 04.03.2019, the petitioner was issued a warning and he was not assigned the work of paper-evaluation and internal examinership for the end semester 2018-2019 with further condition not to accompany students for tours for three years. It was stated by the Petitioner that the written communication was in the form of a complaint given by 34 students against the aforesaid Dr.Raveen and against him and all the allegations were raised only as against the said Dr.Raveen and his name was added in the capacity of supportive behaviour.

4. It was further stated that the Petitioner had given a detailed reply to the communication dated 28.03.2019 issued by the 2nd Respondent / Committee in connection with two complaints dated 05.02.2019 and 08.02.2019 and being not satisfied with his explanation, an enquiry was conducted, in which eight girls appeared before the Committee. At the time of examination of eight girls, the petitioner was asked to sit outside and after recording their evidence, he was called inside. It was also stated that the petitioner's request for production of statement was not granted and inside the enquiry committee, there were three other Professors, who had given statement in his favour and Dr.Raveen to the effect that no such sexual harassment had taken place.

5. It was submitted by the Petitioner that though the petitioner sought for copies of statements of complaints and statements by staff escorts / female faculty, the same were furnished to him only on 07.05.2019, after the enquiry was completed on 17.04.2019 instead of providing at the initial stage. The Petitioner immediately responded to the unfair act of the 2nd Respondent by way of a reply dated 20.05.2019, stating that the procedure adopted by the Committee is in violation of the principles of natural justice and contrary to Section 13 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'the Act').

6. According to the petitioner, in terms of Section 13 of the Act, the proceedings initiated by the Committee are only recommendary in nature and as he is a Government Servant, action needs to be taken only under Rule 17(b) of T.N. Civil Services (Discipline and Appeal) Rules, 1973 and the petitioner has got protection under Article 311 of the Constitution of India. The petitioner also referred to a judgment of the Hon'ble Division Bench of this Court in the case of ***Union of India, Srirangam and another vs. The Registrar, Central Administrative Tribunal, Chennai and another***

[W.P.No.12022 of 2018] decided on 09.09.2018, wherein it has been held as follows:

> "8. The order of the Disciplinary Authority, which was confirmed by the Appellate Authority were set aside by the Central Administrative Tribunal mainly on the ground that the petitioners have failed to follow the procedure/guidelines laid down in O.M. F.No.11013/2/2014-Esst (A-III) of DOP & T, dated 16.7.2016 in the case of allegation of sexual harassment.
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> 9. It is pertinent to note that nothing has been produced to show that only as per the guidelines laid down in O.M. F.No.11013/2/2014-Esst (A-III) of DOP & T, dated 16.7.2016 and the provisions contained in Sub-Rule 2 of Rule 14 of CCS (CCA) Rules, 1965, the petitioners have conducted the inquiry. Therefore, the Central Administrative Tribunal was right in setting aside the order of the Disciplinary Authority as well as the Appellate Authority and remitted the matter back to the Disciplinary Authority with a direction to conduct the inquiry from the stage of preliminary inquiry report and furnish him all the documents. We do not find any illegality in the order of the Central Administrative Tribunal and moreover, there is no scope for our interference in the order of the Central Administrative Tribunal and the writ petition is liable to be dismissed.
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> 10. The writ petition is, therefore, dismissed. No costs. Consequently, W.M.P.No.14006 of 2018 is closed."

7. When there was an enquiry on 06.04.2019 and 09.04.2019 behind the back of the petitioner and the necessary documents sought for by the petitioner were furnished to him only on 07.05.2019, it is apparently evident that the principles of natural justice has been violated and the procedures adumbrated under Rule 7(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (in

short 'Rules') have not been followed in the present case on hand. For the sake of Convenience, Rule 7(1) of the Rules is extracted below:

> "7. Manner of inquiry into complaint – (1) Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses."

8. Finally, it was argued by the petitioner that since there was a violation of principles of natural justice and the procedures contemplated under the Act have not been strictly adhered to, the report of the Committee and the subsequent show cause notice needs interference by this Court.

9. Per contra, the 1st Respondent / College has contended that after appointment of a committee to look into the complaints levelled against the petitioner and other staff members, the College has no other option, but to adopt the recommendations of the Committee.

10. A counter affidavit has been filed on behalf of the 2nd Respondent / Committee, wherein it has been *inter alia* stated as follows:

i) Pursuant to the certain complaints of sexual harassment, received

against the petitioner and Dr.Raveen, who accompanied 42 students for the educational tour, a detailed enquiry was conducted on two occasions on 06.04.2019 and 09.04.2019 on the basis of the complaint dated 08.02.2019 signed by 34 students.

ii) It was stated that due opportunity was afforded to the petitioner to submit his explanation, due to which, he also submitted his explanation on 01.04.2019 denying the allegations levelled against him. The petitioner and Dr.Raveen were permitted to have the assistance of Advocates to defend their case in the enquiry and in the enquiry, the petitioner had stated that since he was strict in the class, such false complaint has been given against him and both the petitioner and Dr.Raveen were allowed to cross examine the witnesses also, thereby the principles of natural justice was completely followed by the Committee in letter and spirit;

iii) It was also stated that since the committee, which had dealt with the sensitive matter of sexual harassment, had obtained advice from an expert Advocate at every stage and followed all the procedures contemplated under various connected enactments and the findings rendered by the Committee is cogent and based on the oral evidence

recorded in the enquiry. Thus, it was prayed by the 2nd Respondent that the writ petition is liable to be dismissed *in limine*.

11. Learned counsel for the Petitioner has vehemently contended that in a case of sexual harassment, action needs to be taken only under the provisions of the service rules applicable to the particular concern and in case there is no separate service rules, the procedures in terms of the guidelines prescribed in Vishaka's case are to be followed and in support of his contention, he has also referred to Section 13 of the Act, especially sub-clause (3)(i), which reads as follows:

> "13 Inquiry Report -
>
> (3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be -
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> (*i*) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

12. Learned counsel for the petitioner has emphasised the word 'recommend' to contend that the Committee appointed by the College can after all submit / recommend its decision / report to the College, on the

basis of which, suitable action has to be initiated under the relevant provisions of law applicable to the College. Even before appointment of a Committee, the petitioner was issued with a punishment order dated 04.03.2019 by the 1st Respondent, which shows the predetermined mind of the 1st Respondent in taking action against him. Moreover, ignoring the fact that the Committee's report is only recommendatory in nature, the entire action flew from the Committee's report without serving required documents to the petitioner at the initial stage of enquiry. The documents sought for by the petitioner were furnished to him in piecemeal and therefore, it is clear that Section 13 of the Act r/w Rule 7 (1) of the Rules has not been strictly complied with. He further drew the attention of this Court to Rule 7(4) of the Rules to substantiate his argument that it is a clear case of violation of principles of natural justice and in order to take vengeance against the petitioner for not signing the record books, such a fictitious, imaginative and anonymous complaint was sent to the 1st Respondent / College by the female students of Zoology Department.

13. Learned counsel for the petitioner has quoted a judgment of the Hon'ble Orissa High Court in the case of ***Jyoti Prakash vs. Internal Appellate Committee and others [W.P.(C) No.242 of 2017] decided on***

16.05.2018, to further contend that the second show cause has to be issued after a full fledged enquiry into the matter under the relevant provisions and not based upon the report of the Internal Committee. For the sake of convenience, the relevant paragraphs of the said judgment are extracted below:

> "10. In the backdrop of this factual aspect, now it is to be seen the legality and propriety of the order impugned which is with the proposed punishment.
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> It is not in dispute that the proposed punishment is only issued after the finding given by the enquiry report forwarded before the disciplinary authority who, accepting it, issues the proposed punishment by way of second show cause notice, thus the second show cause notice is to be issued after conclusion of enquiry.
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> The Bank, presuming the report submitted by the internal complaints committee as enquiry report under the Discipline and Appeal Rule, has issued the impugned proposed show cause notice. As has been stated herein above that in the Act, 2013 there are two parts, Section 11 deals with the duty of the internal complaints committee to conduct an enquiry and it can be submitted before the police by way of a complaint if intended to take criminal action or can be submitted before the disciplinary authority for dealing with such employees under the Discipline and Appeal Rule which is under Section 13 of the Act, 2013.
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> In view thereof the report submitted by the internal complaints committee in view of section 11 cannot be said to be an enquiry report in terms of section 13 to be treated as enquiry report under the provision of Discipline and Appeal Rule and since it is not an enquiry report to be treated U/s.13 as enquiry report, the proposed punishment which is impugned in this writ petition treating the enquiry report submitted under the provision of Section 11 will be said to be an improper decision of the authority since that stage has not yet come because as yet the

proceeding has not been initiated as contemplated under the provision of Section 19(i) of the Act, 2013 and in view thereof the notice cannot be held to be sustainable in the eye of law.

11. This court while discussing the facts in detail herein above, has found that the impugned notice issued on 27.12.2016 is in the teeth of the recommendation made by the internal committee whereby and where under it has been recommended for appropriate action against the respondent in accordance with the provision of the service rule and certainly the service rule to inflict major punishment for removal from service contains a procedure under the provision of Rule 68, as such the punishment which has been proposed for removal from service in terms of Rule 67(1) of SBI Officers" Service Rule can only be inflicted and will be said to be in accordance with service rule if followed by the procedure laid down U/s.68 of the aforesaid rule.

In view thereof the impugned notice dtd.27.12.2016 is not sustainable in the eye of law, accordingly quashed.

12. In the result the matter is remitted before the disciplinary authority of the petitioner to initiate a proceeding as per the applicable Discipline and Appeal Rule and conclude the same within the period as per the stipulation made under the provision of Act, 2013.

With the above observation and directions the writ petition stands disposed of."

Hence, it was his argument that the show cause notice issued against the petitioner is unsustainable and the same needs to be quashed.

14. Mr.John Zachariah, learned counsel for the 1st Respondent / College has reiterated that after appointment of an Enquiry Committee, the role of the College Management, insofar as inquiry under the Act is very

limited and the College Management has to accept the report of the Committee and take further course of action against delinquent persons. He went on to add that the petitioner did not ask for reopening of the enquiry, rather it was his case that required documents were not furnished in time, despite receipt of the same at a later point of time. It was further pleaded that in terms of Service Rules, the Committee has been constituted and there is no two separate Rules contemplated, namely, one under the Act and the another under the Service Rules and whatever proceedings initiated against the petitioner was acted upon under the Service Rules, for which, the provisions of the Act has been referred to for establishing the charges. Learned counsel for R1 in support of his contention has cited the following judgment of this Court in the case of ***The Management of Christian Medical College and Hospital, Vellore vs. Mr.S.G.Dhamodharan [W.P.No.29012 of 2018] decided on 15.03.2019***, in which it has been held as under:

> "15. In the case on hand, the sexual harassment case was complained by the woman employed by the petitioner Management and on the basis of which, an enquiry was conducted by the special committee constituted for the purpose. In terms of the Vishaka guidelines, the committee has rendered its findings against the respondent employee and on the basis of which, an action was taken by the Management in dismissing the employee from service. Once the committee makes a recommendation by giving a report against the employee

concerned, as rightly contented by the learned counsel for the petitioner that the Management had no choice except to take action and in this case, the Management had taken a call to terminate the service of the employee by considering the circumstances of the case. When the Management had no choice except to take action against the employee concerned, how could the Industrial Tribunal compel the parties to adduce a fresh evidence to prove the charge against the employee by sitting in appeal over the conclusion reached by the special committee.

16. The conclusion reached by the Industrial Tribunal that the enquiry was not fair and proper, cannot be countenanced both in law and http://www.judis.nic.in on facts, since the committee's finding cannot be trifled with by the Industrial Tribunal or the Labour Court as an appellate authority. Unfortunately, the Industrial Tribunal by non-application of mind, has treated the case of sexual harassment on par with normal case where an employee suffers adverse action by the Management."

15. In reply to the above, Mr.V.Vijay Shankar, learned counsel for the Petitioner has submitted that the aforesaid judgment relied upon by the 1st Respondent is not applicable to the present case, inasmuch as the said case falls within the purview of Industrial Dispute Act and Section 13 of the Act has not been referred to and considered in that case.

16. Learned Counsel for the 2nd Respondent / Committee of Enquiry / Internal Complaints Committee has strenuously contended that the principle applied to a normal enquiry may not be applicable to the enquiry conducted under the Act. He strongly refuted the contention of the learned

counsel for the petitioner that the enquiry was conducted behind the back of the petitioner, as the Petitioner was represented by his Lawyer. There were 34 complaints received from 34 students of the III year B.Sc., Zoology against the Petitioner and one Dr.Raveen and after a thorough enquiry, the Committee had come to the conclusion that the provisions of Section 2(n) would get attracted and the conduct of the petitioner clearly falls within the ambit of sexual harassment.

17. It was the contention of the learned counsel for the 2nd Respondent that the averments made by the petitioner that he was made a scapegoat and was roped in falsely in order to hide the mistake of a student, who did not submit the record note book, have no basis, as not only the said student, but also other students had not submitted their record book in time and their lapses were condoned and the record notes accepted. It was his further contention that the Committee, being aware of the fact that the issue of sexual harassment has to be handled with utmost care, had sought the assistance of an expert Advocate, having wide exposure of handling such cases of sexual harassment.

18. The learned counsel for the 2nd Respondent in the midst of his

argument has referred to the judgment of the Hon'ble Supreme Court in the case of ***The Chairman, Navodaya Vidyalaya Samiti, Ministry of HRD and others vs. T.Murugesan and others***, reported in ***MANU/TN/0760/2008*** and contended that the Hon'ble Supreme Court had clarified the Vishaka's case and held that the report of the Sexual Harassment Committee is the base for proceeding further in the sexual harassment case and bearing in mind the importance shown to the report in the said judgment, the Committee conducted the enquiry. For the sake of brevity, the relevant passages of the judgment are extracted below:

> "27. Subsequently, the Supreme Court considered the complaints made by various representations of the woman's organisations and passed further order clarifying Vishaka's case where the Supreme Court directed Governments to strictly go by the report of the Sexual Harassment Committee and made the enquiry report as the starting point of further proceedings. The employers were directed to proceed from the stage of the enquiry report and take appropriate action. In this regard, the Supreme Court also directed for amendment of relevant Service Rules.
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> 28. This order of the Supreme Court was made on 26.01.2004 in Medha Kotwal Lele and Ors. v. Union of India and Ors. W.P. (Crl) Nos. 173-177/1999. The order of the Supreme Court reads as follows:
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> > Several Petitions had been filed before this Court by Women Organisations and on the basis of the note prepared by the Registrar General that in respect of sexual harassment cases the Complaints Committees were not formed in accordance with the guidelines issued by this Court in Vishaka v. State of

Rajasthan and that these petitions fell under Clause (6) of the PIL Guidelines given by this Court i.e. "Atrocities on Women" and in any event the Guidelines setout in Vishaka were not being followed. Thereupon, this Court treated the petitions as Writ Petitions filed in public interest.

Notice had been issued to several parties including the Government concerned and on getting appropriate responses from them and now after hearing Learned Attorney General for UOI and learned Counsel we direct as follows:

> Complaints Committee as envisaged by the Supreme Court in its Judgment in Vishakas Case , will be deemed to be an inquiry authority for the purposes case will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules 1964 (hereinafter called CCS Rules) and the report of the complaints Committee shall be deemed to be an inquiry report under the CCS rules. Thereafter the disciplinary authority will act on the report in accordance with the rules.

Similar amendments shall also be carried out in the Industrial Employment (Standing Order) Rules.

29. Therefore, now the employers can have only one stage action. After the Sexual Harassment Committee's report, they must proceed to impose punishment on an employee found guilty of sexual harassment. This order came to be passed by the Supreme Court, as the Court had received complaints that the earlier procedure led the woman being further harassed by attending before two separate enquiries one by the Special Committee and the other before the Enquiry Officer appointed in terms of Service Rules. In the light of the above, the question of examining the victim girl in the presence of the first respondent does not arise."

19. Thus, it was prayed that since the Committee, after adhering to all the procedures adumbrated under the Act, had submitted its fact finding report to the College, there is no necessity to interfere with the said findings and the Writ Petition is liable to be dismissed at the threshold.

20. Heard the learned counsel for the petitioner and carefully analysed the material documents available on record submitted on either side.

21. A meticulous reading of the entire averments set out in the case unwraps the facts that the Petitioner was appointed as Assistant Professor in the Zoology Department and as a part of curriculum activity, an Industrial Tour was arranged for the students of III year between 09.01.2019 and 14.01.2019 to Bangalore, Mysore and Coorg, in which around 46 students participated. The said tour brought disrespect not only to the College, but also put an end to the career development of the petitioner and one Dr.Raveen, pursuant to the complaints received from as many as 34 students, alleging sexual assault on them. The petitioner was charged for his supportive behaviour extended by him to Dr.Raveen in respect of his sexual harassment to female students and though the act of the petitioner

cannot be said to be so serious as that of Dr.Raveen, from the facts pleaded herein, the petitioner also involved in certain acts, which is also construed as an unbecoming conduct of the Petitioner, attracting the provisions of the Act.

22. The question as to whether the conduct of the petitioner would attract the provisions of the Act or not cannot be gone into and answered at this stage, as the Petitioner has challenged the second show cause notice issued against him in the present case on hand.

23. The main whack of the petitioner on the issuance of the second show cause notice was that there was an utter and a gross violation of principles of natural justice, as he was not permitted to stay in the hall during enquiry of girl students. The said contention was highly repudiated by the 2nd Respondent stating that Advocates of the Petitioner and Dr.Raveen's choice were allowed to represent them in the enquiry and whatever they wanted to convey to the Committee were passed on through their Advocates. This Court finds justification in the act of the Committee, on the reasoning that as soon as the students, who lodged complaints against the Petitioner, notice the personal appearance of the petitioner in

the very same hall, there are chances of their getting panic out of fear and threat and as a result, the entire truth will not come out of their mouth, thereby, leaving allegations levelled against the Petitioner and Dr.Raveen unnoticed by the Committee. Hence, in the considered opinion of this Court, there is no violation of the principles of natural justice by the Committee in the conduct of the enquiry and this Court finds no infirmity with the report of the Committee.

24. The second attack on the impugned show cause notice was that when the service rules are available for the College, initiation of action against the petitioner on the basis of the report of the Committee is arbitrary in nature, for which, it was replied by the 1st Respondent that the report of the Committee was referred to by the College in support of issuance of show cause notice only for unearthing the fact that there are prima facie case made out against the petitioner in respect of allegations of sexual harassment and not otherwise. A reading of the impugned show cause notice discloses the fact that there is a Board of Directors in the College to look into all these issues and they not only considered the report of the Committee, but also verified the past records of the petitioner and found that there was no extenuating circumstances in favour of the

petitioner. From this, an inference can be drawn that the petitioner may be a habitual offender of involving himself in such activities along with Dr.Raveen. The next march of the College after issuance of the show cause notice was restrained by the petitioner by way of filing the present writ petition and it cannot be said that the action taken by the College was purely on the basis of the report of the Committee.

25. It is worthwhile to mention here that the Hon'ble Supreme, while dealing with a case of seeking quashment of show cause notice in the case of ***Union of India and another vs. Kunisetty Satyanarayana***, reported in ***(2006) 12 SCC 28***, has been pleased to hold as under:

> "13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and another AIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001(10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc.
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> 14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights

> of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.
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> 15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.
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> 16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

26. In this regard, the judgment relied upon by the learned counsel for the Petitioner in ***Jyoti Prakash vs. Internal Appellate Committee and others*** (cited supra) is distinguishable to the extent that in the said judgment, it was observed that the punishment of removal from service was proposed straightaway in the teeth of the recommendation made by the Internal Committee therein without invoking the appropriate service rules, especially ignoring the procedures contemplated under Rule 68 of SBI

Officers Service Rules therein. Therefore, the said judgment will not come to the rescue of the petitioner.

27. It is not disputed that the petitioner did not seek for reopening of the enquiry and even assuming that the right of the petitioner is deprived by the Committee, as he was forced to be dependent on his Advocate to defend himself, considering the fact that the allegations were raised by female students and it is not fair to call upon the girls in the garb of enquiry on several occasions to give evidence, that too before the person, against whom complaint was submitted. That apart, the evidence of one Tanushree, who has narrated the entire incident, is sufficient to corroborate the version of other similarly affected girls and there is no need to obtain statements in public from all girls and in such an event, their future will be at stake. This Court suggests that the said Tanushree ought to be taken for counselling in order to make her overcome the bad experiences and I want to emphasise here that the mistake is also on the part of the 1st Respondent / College by deputing only two lady teachers to control several female students.

28. This Court is of the view that the petitioner, in order to avoid such mishap to happen, should have withdrawn his participation from the

tour, if he has no confidence in him, as the job, which he is holding is a respectful one. Mahatma Gandhi, the Father of the Nation once stated that "a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them. ..."

29. Similarly, Dr.S.Radhakrishnan has stated that "we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness. ....The Indian society has elevated the teacher as "Guru Brahma, Guru Vishnu, Guru Devo Maheswaraha" As Brahma, the teacher creates knowledge, learning, wisdom and also creates out of his students, men and women, equipped with ability and knowledge, discipline and intellectualism to enable them to face the challenges of their lives. As Vishnu, the teacher is preserver of learning. As Maheswara, he destroys ignorance. ....."

30. This Court, in the case of ***The Secretary, Sri Ramakrishna Vidhyalayam High School, Tirupparaithurai, Tiruchirapalli District Vs. State of Tamil Nadu, Rep.by Special Commissioner and Secretary to Government and others***, reported in ***1990 (9) WLR 62***, had vividly described the respectful position of a teacher in this country as follows:

> "51.It is very lamentable state of affairs that in this country, a teacher who was considered as equal to God, should fall from the high pedestal to the lowest level. Out scriptures command the students to consider the teacher as a God (Acharya Devo Bhava). The term ?Acharya? in Sanskrit means a person who not only teaches lessons to students, but also ensures good conduct of his pupils. The more important part of the definition is that he shall himself practice what he preaches. In Sanskrit language the term ?Guru? also means teacher. The syllable, 'Gu' represents darkness (symbolishing ignorance). The syllable, 'Ru' represents the removal thereof. Thus, a Guru is so called as he removes the darkness and the ignorance from the minds of the students. In fact, there is a saying that it is only with the blessings of a teacher that a person blossoms into a full man."

31. For the aforesaid reasons, this Courts finds that there is no justifiable ground to interfere with the Fact Finding Report as well as the second show cause notice, as the further action followed by the show cause notice will only bring the cat out of the bag. Hence, in the considered opinion of this Court, the Writ Petition is liable to be dismissed.

Accordingly, the ***Writ Petition is dismissed as devoid of merits***.

32. Before parting with the judgment, this Court feels it appropriate to point out that Christian missionaries are always on the source of attack in one way or the other and in the present era, there are several accusations against them for indulging in compulsory conversion of people of other religions into Christianity. Now, there is a general feeling amongst the parents of students, especially female students that co-educational study in Christian institutions is highly unsafe for the future of their children and though they impart good education, the preach of morality will be a million dollar question. As long as a religion is practiced in streets in lieu of its worship places, like Temple, Mosque, Church, etc., such devastation, as in the present case, does occur and will be mushrooming.

33. This Court do not want to go into the question of who is at fault in the present case?, but at the same time, it has become imperative for this Court to indicate that several enactments were brought into force for safeguarding the interest of Women and we have to ask a question for ourselves as to whether those laws are invoked by women with genuine reasons.

34. Certain laws, which are in existence for easy access to women, lend itself to easy misuse that women will find it hard to resist the temptation to "teach a lesson" to the male members and will file frivolous and false cases. A similar trend is already being observed in the case of anti-dowry law (498-A), which is being misused to such an extent that the Supreme Court has termed it "Legal Terrorism". The Hon'ble Supreme Court in the case of **Sushil Kumar Sharma vs. Union of India and others (Writ Petition (civil) 141 of 2005), decided on 19.07.2015, has held as follows:**

> ".....The object of the provision is prevention of the dowry meance. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have filed with obligue motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers

of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre- conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumption are drawn which again are reputable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that in innocent person is not

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made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many

cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.

35. This is the right time for the Government to think of suitable amendment in those laws in order to prevent its misuse so as to safeguard the interest of the innocent masculinity too. No costs. Consequently, connected miscellaneous petitions are closed.

13.08.2019

Index: Yes / No
Internet: Yes / No
Speaking Order: Yes / No
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Note: Registry is directed to mark a copy of this order to the Ministry of Law and Justice, New Delhi.
Issue order copy on 16.08.2019

W.P.15145 of 2019