

**CNR No.DLCT12-000093-2023**  
**Cr. Case No. 06/2023**  
**U/s 354/354A/354D/506(1) IPC**  
**FIR No. 78/2023**  
**PS- Connaught Place**  
**State Vs. Brij Bhushan Singh & Anr.**

**21.10.2023**

Present: Sh. Atul Kumar Srivastava, Ld. Addl. PP.

IO/SI Pooja present.

Sh. Nilanjan Dey, Ld. Counsel for the complainants.

Sh. Rajiv Mohan, Sh. Rishabh Bhati, Sh. Rehan Khan, Sh.

Lalit Mohan, Sh. Mohit Joshi and Sh. Shivender Gupta, Ld.

Counsels for both the accused persons.

Accused Brij Bhushan not present.

Accused Vinod Tomar present.

Matter is listed for arguments on charge.

Exemption application is filed for accused Brij Bhushan, identity not disputed.

Submissions heard, record perused. Allowed for today only.

In continuation of his submissions from the last date of hearing, Sh. Rajiv Mohan, Ld. Counsel for both the accused persons has reiterated that the Oversight Committee is akin to ICC under POSH Act. Drawing the attention of the court to Section 11 of the POSH Act, it has been argued that the said Section mandates that if a *prima facie* case is found out against the respondent/accused, the ICC, within 7 days, shall recommend registration of the FIR against the aforesaid respondent/accused, however since in the matter at hand, no such

recommendation has been made, it is safe to assume that the Oversight Committee, working in the capacity of the ICC under POSH Act, did not find a *prima facie* case against accused no.1. And that is how, Ld. Counsel has explained the report qua its silence on the allegations of sexual harassment. To put it in simple words, non-recommendation of FIR is equivalent to the fact that no case was found out.

It is further submitted that despite enjoying the status akin to ICC, the report of Oversight Committee is not being used as a letter of exoneration for the accused no.1.

In reference to the contentions raised on 09.08.2023, recorded at serial no.5 of the said order-sheet, Ld. Defence Counsel submits that as per the mandate of section 11, the case was not recommended to be registered by the ICC, the *factum* of exoneration in the enquiry can be taken note of by this fact only. To explain himself, Ld. Defence Counsel submits that since no *prima facie* case was found out by the Oversight Committee, and since no case was found out, no FIR was registered and since no FIR was registered, it automatically amounts to exoneration.

Ld. Addl. PP has countered the argument by submitting that the very constitution of the Oversight Committee is not in accordance with section 4 of the POSH Act and, therefore it cannot be said that it is an ICC for the purposes of the act. Secondly, there is no question of exoneration because no recommendations/findings have been given by the said Committee. In support of his arguments, Ld. Addl. PP has placed

on record observations in Punjab & Sind Bank v Durgesh Kuwar, Supreme Court, decided on 25.02.2020.

Continuing further, Ld. Defence Counsel has argued that the statements made before the Oversight Committee are previous statements within the meaning of the Section 145 of the Indian Evidence Act. It is argued that the statements made before the Oversight Committee and the statements recorded u/s 164 Cr.P.C. have material contradictions and the statements made later in time have material improvements and, therefore are liable to be rejected *in toto*. In support of his arguments, Ld. Defence Counsel has placed following judgments on record:

a) State (NCT of Delhi) v Mukesh, (2014) 15 SCC 661

b) Mohanlal Gangaram Gehani v State of Maharashtra, (1982) 1 SCC 700

Ld. Addl. PP submits that it is redundant to talk about the concept of previous statements at this stage as the said concept is applicable at the stage of evidence and not before.

It has been argued further by the Defence Counsel that since there are material contradictions in the statements of the prosecution witnesses, that itself calls for discharge of the accused as the contradictions have the effect of taking the case away from the arena of *grave suspicion*, towards only *mere suspicion*. In support, Ld. Defence Counsel has placed following judgments:

a) Iveco Magirus Brandschutztechnik GMBH v Nirmal Kishore Bhartiya and Anr., 2023 SCC OnLine SC 1258

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b) Bindu and Anr. v State of NCT of Delhi, 2019 SCC OnLine  
Del 8963

c) Mamta Tyagi v State of Delhi and Anr., 2022 SCC OnLine  
Del 3509 : (2023) 297 DLT 291

Be put up for further arguments on **30.10.2023 at 02:30 PM.**

**(Harjeet Singh Jaspal)**  
**ACMM-04/RADC/New Delhi**  
**21.10.2023**