

Balancing justice and fairness: Madras High Court's ruling on time-barred sexual harassment complaints

On June 11, 2024, a single judge bench of the Hon'ble High Court of Madras ("Madras HC") in *R. Mohanakrishnan v Deputy Inspector General of Police*¹ made a significant ruling reinforcing that the courts should not get swayed away by discrepancies and hyper technicalities while considering cases relating to sexual harassment. Where procedural violations are pointed out, the overall fairness of the enquiry is what matters.

The judgment also points out that severe cases of sexual harassment leading to significant mental distress and anxiety for victims can be reported and examined at any time, bypassing the 3/6 (three/six) month reporting period as set out in Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013 ("PoSH Act"). It further emphasizes that in such matters, it is essential for the disciplinary authorities and courts to consider the entire issue with due sensitivity and empathy for the victims, while ensuring fair and impartial action and enquiry against the delinquent, ensuring due compliance of the principles of natural justice.

Brief Facts

The instant case arises out of a writ petition filed by a superintendent of Nilgiris police station in Tamil Nadu ("Petitioner") under Article 226 of the Indian Constitution². The petition *inter alia* sought quashing of an enquiry report which was submitted by the Internal Complaints Committee ("ICC") of the Nilgiris Police Station dated March 6, 2023 ("ICC Report").

The ICC Report was submitted based on an investigation conducted by the ICC into a sexual harassment complaint which was lodged against the Petitioner by a junior assistant pertaining to an alleged incident of sexual harassment (rape) that had occurred more than 4 (four) years ago. While the alleged incident took place in April 2018, the enquiry took place in December 2022.

The Petitioner firstly contended that the complaint was admitted by the ICC contrary to Section 9 of the PoSH Act, which requires complaints to be lodged within 3 (three) months after the occurrence of the incident or the last incident (in the case of a series of incidents). The PoSH Act allows the timeline to be extended upto 6 (six) months, if the ICC is satisfied that the circumstances were such that prevented the aggrieved woman from filing a complaint within the said period.

The Petitioner further contended that the enquiry proceedings conducted by the ICC were not in accordance with the established procedures laid down under law and that it had vitiated the principles of natural justice. In this respect, the Petitioner specifically pointed out that he was not provided a fair and proper hearing as (a) the ICC had delayed in

¹ 2024 SCC OnLine Mad 2123, Order dated November 11, 2024

² Power of High Court to issue certain writs

providing him a copy of the complaint and had also (b) denied him the opportunity to cross-examine the alleged victim and witnesses.

The Tamil Nadu Government (“**State**”) on the other hand, contended that the time-limit prescribed under Section 9 of the PoSH Act, was applicable only in those cases where the complaint was lodged by the aggrieved woman herself and not in cases where the complaint was referred to the ICC by the employer, as in the instant case. The State also submitted that the delay in reporting this earlier was owing to the fear and mental distress that the survivor had been experiencing. Further, on the contention pertaining to the enquiry process not being conducted in line with the due procedure laid down under law, the State submitted that the Petitioner was not provided with the opportunity to directly cross-examine the survivor taking due cognizance of the fragile state of mind of the survivor. However, pertinent questions based on the Petitioner’s averments were presented to the survivor and other witnesses, and their answers were elucidated. Accordingly, the State contended that there was no violation or deviation from the procedure laid down under law and that the principles of natural justice had been complied with.

Issues for Consideration

After hearing the arguments advanced by both the parties, the Madras HC identified 2 (two) primary issues which required analysis and deliberation:

1. whether or not, the impugned ICC Report was liable to be set aside as the complaint pertained to an incident which had allegedly occurred prior to the 6 (six) month timeline prescribed under Section 9 of the PoSH Act; and
2. whether or not, the impugned ICC Report is liable to be quashed for violation of principles of natural justice.

Analysis

The Madras HC after careful consideration of the arguments advanced, the objective of the PoSH Act and the intent behind the relevant provisions thereunder, besides a careful analysis of the PoSH jurisprudence that has evolved over the past decade³, rejected the Petitioner’s argument that the ICC should not have admitted the complaint in the first place as it was time-barred under Section 9 of the PoSH Act. It also rejected the Petitioner’s argument that the ICC Report should be set aside for procedural irregularities such as not issuing a copy of the complaint to the Petitioner within 7 (seven) working days and not issuing a copy of the ICC Report to the Petitioner within a period of 10 (ten) days after the completion of the enquiry. In this respect, the court pointed out that:

1. Often there may be power dynamics that are mired in sexual harassment cases and there could be several considerations and deterrents for an aggrieved subordinate when they consider reporting the sexual misconduct of a superior.
2. When the offence complained is of a serious nature, having the effect of causing grave mental trauma and stress to the victim, it may push her to a dilemma not to reveal or complain due to the fear of secondary and tertiary victimization. On the other hand, she may also be unable to withstand, swallow or suppress the same and such state of the victim amounts to ‘continuous sexual harassment’.
3. So long as the victim undergoes such a phenomenon and the same is directly attributable only to the perpetrator, this would amount to a ‘continuing offence’. Such a phenomenon is not just the effect of the act but is the injury itself.
4. The injury is not complete just by the forcible physical intercourse. The injury adds up every day when the victim is thereafter made to silently keep quiet and also face the perpetrator at the workplace. A continuing offence is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuation of the said injury.

³ Union of India and Ors. v. Mudrika Singh - 2021 SCC Online 1173
 Union of India v. Dhillip Paul - 2023 SCC Online SC 1423
 Aureliano Fernandes vs. State of Goa and Ors - (2024) 1 Supreme Court Cases 632

5. In cases of serious allegations such as rape or continuous molestation or harassment, the same would be a continuing misconduct and every day until the situation is redressed or brought to the notice of the appropriate authority, it would give rise to a fresh cause of action.

With respect to the procedural inconsistencies pointed out by the Petitioner in the conduct of the enquiry, the court pointed out that while the procedural rules shall be complied with as far as practicable, deviations that do not strike at the core of the principles of natural justice shall be permissible considering the sensitivity of the matter. In this respect, the court underlined the fact that the timelines prescribed under the PoSH Act for furnishing the copy of the complaint to the respondent, completion of enquiry and taking further actions are all meant solely to expedite prompt action and are not periods of limitation which would entitle the delinquent employee to question the proceedings itself.

The right to cross-examine

The only argument of the Petitioner that was accepted by the Madras HC was that he was denied the opportunity to cross-examine the alleged victim and witnesses, which was noted as a '*valuable facet to ensure fairness and impartiality in the enquiry and principles of natural justice*'. In this respect, the Madras HC pointed out that:

1. The principles of *audi alterem partem*⁴ which includes hearing the version of the delinquent employee and furnishing him the version of the statement of the witnesses and providing an opportunity for cross-examination would be within the core principles of natural justice as the delinquent employee will be visited with serious ramifications depending upon the findings in the ICC Report.
2. However, considering the sensitivity and balance of power equations, if, in the opinion of the ICC, exposure of the victim further to the delinquent would amount to tertiary victimization, there can be elasticity in the manner of cross-examination.
3. In respect of the witnesses who are not examined on behalf of the Petitioner but have been examined on behalf of the prosecution to establish the charges, an opportunity needs to be given to the Petitioner to cross-examine such witnesses.
4. The absence of such an exercise would not comply with the opportunity of hearing and effectively putting forth the case of the Petitioner to satisfy the mandate of Article 311 of the Constitution of India⁵.

In view of the above, the Madras HC set aside the ICC Report and directed the ICC to continue with the enquiry, by allowing the Petitioner an opportunity to indicate the names of the witnesses whom he would prefer to cross-examine and directing the ICC to re-summon such witnesses for cross-examination by the Petitioner. As far as the victims are concerned, if the ICC is of the opinion that the victims should not be exposed directly before the Petitioner, the court instructed that the victims be protected by a screen and answer the questions or the Petitioner prepare a list of questions and the questions be administered by any other employee chosen by the Petitioner, who may not be a rank higher than that of the Petitioner. If the Petitioner is unable to make such a choice, such questions can be administered by the ICC itself to the victims.

Accordingly, the Madras HC directed the ICC to submit a fresh enquiry report with its findings within 60 (sixty) days, that is, on or before August 31, 2024. The disciplinary authority may thereafter take necessary steps to complete the disciplinary proceedings in accordance with the applicable service rules.

Conclusion

As a prelude to the judgment, the Madras HC pointed out that "the menace of sexual harassment in the work-place is a pervasive and often hidden social problem. Sexual harassment encompasses a wide range of behaviours and it causes considerable harm to women. It can have deleterious consequences for the mental and physical health of women. The victims of harassment continue to report depressive symptoms even after a decade later and the longevity of the after-effects is even more. The mental deterioration may include depression, self-doubt, withdrawal from employment, fear

⁴ Audi alteram partem is a Latin phrase meaning "listen to the other side", or "let the other side be heard as well".

⁵ Article 311 of the Constitution - Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

of being labelled as trouble-makers and spoiling the organisation's reputation etc. In the Indian context, the fear is writ large as the victims themselves are blamed for the harassment. Such secondary victimization is not only in the hands of the employer or the larger society but is also feared within the immediate society and family”.

The ruling of the Madras HC sheds light on the various factors such as fear of retaliation, power-play and other barriers that often inhibit victims from coming forward promptly and highlights the need for a more nuanced and empathetic approach to addressing such cases. By acknowledging the challenges and fears that may prevent victims from reporting promptly, the judgment aligns with the spirit of the law, which at the end of the day, aims to provide a safe and supportive environment for survivors to seek redress and justice.

This pivotal judgment further underscores its commitment to ensuring that victims are not further marginalized or silenced by rigid legal technicalities. Furthermore, the court's recognition of the importance of the right to cross-examine, while simultaneously acknowledging the need for certain checks and balances to prevent the cross-examination from causing further distress to the victim, is a balanced approach which seeks to safeguard the interests of all parties while upholding the principles of fairness and equity.

While the decision underscores the importance of flexibility and empathy in addressing time barred complaints under the PoSH Act, its intent is to not indiscriminately open the floodgates for all historical cases. Rather, it calls for a balanced and contextual evaluation of each situation, taking into account the unique circumstances and challenges faced by survivors.

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