

## **Protection against Retaliation & Victimization of Complainant or Witness**

### **Blog Series – 15 February 11 2020 PoSH – Vol.8**

I wish to draw reference to the following Judgments to Hon'ble Courts on the protection against Retaliation & Victimization of Complainant or Witness, under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

#### **1. IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 31.07.2019

W.P.(C) 8288/2019

SUNITA THAWANI vs UNION OF INDIA AND ANR

CORAM: HON'BLE THE CHIEF JUSTICE, HON'BLE MR. JUSTICE C.HARI SHANKAR

#### **2. Hon'ble SUPREME COURT OF INDIA**

Date 06-01-2020

Special Leave to Appeal (C) No(s). 28851/2019 (Arising out of impugned final judgment and order dated 31-07-2019 in WP(C) No. 8288/2019 passed by the High Court Of Delhi)

SUNITA THAWANI vs UNION OF INDIA & ANR.

CORAM : HON'BLE MRS. JUSTICE R. BANUMATHI HON'BLE MR. JUSTICE A.S. BOPANNA

The Hon'ble courts did not entertain the petition and appeal of the petitioner who had prayed

- (i) so as to include retaliation/victimization as a facet of sexual harassment and to provide for measures for protection of women who have complained of sexual harassment/witnesses/those involved in the inquiry

process, including those making an allegation (whether express or not) that some person has contravened the Act and/or committed an act of sexual harassment from such victimization/retaliation;

(ii) for general directions to provide for measure for protection of women who have complained of sexual harassment / witnesses / those involved in the inquiry process, including those making an allegation (whether express or not) that some person has contravened the Act and/or committed an act of sexual harassment from such victimization/retaliation till such time as suitable amendments to The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The petition was disposed, and the Hon'ble High court has observed that:

*It is for this petitioner to make a representation before the concerned authority. Amendment of law or the enactment of law is a legislative function.*

Retaliation, or victimization, are only the provocation for an act of assault. If an act of assault amounts to sexual harassment, it would anyway be punishable under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. If it does not, it cannot be punishable under the said Act, as the act deals with only offences of a sexual nature, and an offence, which does not lead to sexual harassment, can obviously find no place therein.

As stated, the Sexual Harassment legislation deals with offences of sexual nature and if the respondent is retaliating with another sexual harassment, it will be dealt in the same legislation separately. And if it is not, then same can be dealt with other applicable legislation as the Sexual harassment cannot deal with it.

So, it is evident that any Sexual Harassment allegation or retaliatory/victimization of Sexual Harassment can be dealt in this legislation. Stricter punishment and immediate action will deter the delinquent to retaliate. And in case of such retaliation or victimization, not amounting to Sexual Harassment, the Complainant or Witness can report it to Police for appropriate action as per the Indian Penal Code.

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