

**IN THE COURT OF SH DEV SAROHA, METROPOLITAN  
MAGISTRATE-05, NEW DELHI DISTRICT, PATIALA HOUSE  
COURTS, NEW DELHI**

**J U D G M E N T**

**CC NO.38533/2016**

**SREELEJA NAIR VS SRI LANKA AIRLINES LTD.**

**U/S 27 SEXUAL HARASSMENT**

A	The Sl. No. of the case	: 38533/2016
b	The date of commission	: 11.11.2014
c	The date of Institution of the case	: 02.01.2016
d	The name of complainant	: Sreeleja Nair W/o Sh. Prasad Nair R/o K-5114, Gaur Green City, Vaibhav Khand, Ghaziabad, U. P.
e	The name of accused persons and their parentages	: Srilankan Airlines Ltd. C/o STIC Travels Pvt. Ltd. No.312, 3 <sup>rd</sup> Floor, World Trace Centre, Barakhamba Avenue, Connaught Place, New Delhi.
f	The offence complained of	: Section 4 (1) of Sexual Harassment of Women at work place (Prevention Prohibition and Redressal Act) 2013
g	The plea of both accused	: Not guilty
h	Orders reserved on	: 15.12.2020
i	The final order	: Convicted
j	The date of judgment	: 21.12.2020

**BRIEF STATEMENT OF FACTS FOR THE DECISION:-**

1. It is the case of the complainant that complainant joined the services of accused Airlines as Secretary at New Delhi and thereafter, she as promoted to Sales Executive and worked in the office of Delhi since 1999 to 2011. On 08.10.2009, accused's local manager called the complainant in his office and misbehaved and sexually harassed her. It is further submitted that thereafter, the complainant reported the incident to the then Regional Manager. The accused company deliberately delayed the inquiry on the pretext that an appropriate action would be taken against accused's manager. On 15.03.2010, again complainant was misbehaved and harassed by accused's local manager. Despite reporting the matter to senior management, accused's local manager again called the complainant in the month of September 2010 and insulted her on a car parking issue.
2. It is further submitted that on 09.12.2020, accused's local manager handed over a transfer letter dated 02.12.2020 to complainant to join Kochi w.e.f. 01.01.2011. However, complainant showed her inability to join due to family extension. On 10.02.2011, complainant joined Kochi office. The complainant made various complaints through Human Resources and other officers. On 28.11.2011, the complainant sent another representation to accused airline narrating the same that she would lodge a complaint in police station. On 28.12.2011, the accused airline informed the complainant that they have appointed a Committee to look into the sexual harassment complaint. It is further submitted that at request of National Commission for Women vide letter date

14.08.2013, police authority conducted enquiry and on 05.04.2014 an FIR no.69/2014 has been registered u/s 509 IPC. The complainant has further alleged that the accused company did not have complaint committee as per Sexual Harassment for Women at work place (Prevention, Prohibition and Redressal Act) 2013. She has submitted that the department of Women and Child has informed the Hon'ble Delhi High Court that the accused company did not have an internal committee as per Sexual Harassment for Women at work place (Prevention, Prohibition and Redressal Act) 2013 on 11.11.2014. Thus, the accused company failed to comply the provision of that and are liable to be penalized under Section 26 of Sexual Harassment for Women at work place (Prevention, Prohibition and Redressal Act) 2013. Notice u/s 26 of Sexual Harassment for Women at work place (Prevention, Prohibition and Redressal Act) 2013 was framed on 03.02.2017.

3. To prove its case, the complainant examined herself as CW1 in which she has submitted that he is victim of sexual harassment by local manager of accused company and the accused company did not have complaint committee as per directions of Hon'ble Supreme Court in Vishakha vs State of Rajasthan and as per Sexual Harassment for Women at work place (Prevention, Prohibition and Redressal Act) 2013. She has submitted that she filed a writ petition WP no.3944 of 2014 Ex.CW1/2 in the Hon'ble Delhi High Court. Judgment of Hon,ble Delhi High Court is Ex.CW1/1. She further submitted that during the proceeding in Hon'ble Delhi High Court, the accused company filed affidavit Ex.CW1/4. She has further submitted that department of Women

and Child had informed the Hon'ble Delhi High Court that accused company did not have internal committee as per Sexual Harassment for Women at work place (Prevention, Prohibition and Redressal Act) 2013 on 11.11.2014.

4. She was cross examined at length but for the sake of brevity same is not being reproduced.
5. CW2 Sh. Umesh Verma, JJA, Delhi High Court, RKD Branch stated that he has brought the summoned record writ petition (civil) 3944/2014 titled as Sreeleja Nair vs Ministry of Women and Child Development and Ors. and the judgment of Hon'ble High Court in writ petition (civil) 3944/2014 dated 18.03.2015. He further submitted that all the affidavits submitted by him are true as per their record. Also, WP no.3994/2014 is true as per their record. This witness was not cross examined by Ld. Counsel for defence despite given opportunity.
6. Statement of accused Chinthaka Weera Singhe AR of the accused company was recorded on 11.04.2019 in which denied the allegations and stated that they had special policy against sexual harassment. He further stated that the company had a policy for taking action against sexual harassment at work place and even complaint of the complainant was referred to an internal committee and was decided. He further stated that the complainant after dismissal of the appeal filed against the findings of the internal committee only filed a writ petition before Hon'ble High Court where the company agreed to form another committee as per satisfaction of Delhi High Court.
7. In its defence, the accused company examined Sh. Chinthaka Weera

Singhe AR of the accused company as DW1 to prove its case. DW1 has stated that Srilankan Airlines Ltd. has already passed a resolution in his favour which is Ex.DW1/1. He also received further the authority letter dated 11.07.2019 on email and copy of the same is Ex.DW1/2(OSR). Copy of mail dated 23.09.2005 sent by company to all the employees in respect of the launching of a special policy against harassment effective from 01.10.2005, the true copy of which is Ex.DW1/3. It is further stated that along with the said mail a CEO's message to staff was also sent to all the employees and the true copy of which is Ex.DW1/4. Part of the email dated 23.09.2005 was also the copy of special policy against harassment of the company which is Ex.DW1/5. DW1 also brought the copy of email dated 25.09.2008 sent by the company to inform all in the company regarding the new member of the internal committee of the company appointed under the special policy against harassment of the company. The same is Ex.DW1/6. All the documents Ex.DW1/2 to Ex.DW1/6 are present on the email ID of the company. However, Ld. Counsel for complainant has objected on exhibition of such documents.

8. DW1 was cross examined at length but for the sake of brevity same is not being reproduced.
9. Defence evidence was closed and the matter was put up for arguments.
10. Ld. counsel for complainant has argued that the respondent is liable to be punished under section 26 of the POSH Act as there was no internal complaint committee functioning at the Delhi Division of Sri Lankan Airlines as per the laws of India i.e. as per POSH Act. The testimony of the complainant supported by the exhibited documents including EX

CWI/5 additional affidavit filed by Ms. Sonya Gupta, the then Director, Department of Woman & Child, Govt. of NCT of Delhi has proved that the respondent did not have committee as per the POSH Act. In para 5 Of the affidavit, it is clearly submitted that on 11.11.2014 Sri Lankan Airlines did not have the Committee as per Law of the land. The Minutes of Meeting dated 7.10.2014 held in the chamber of Dy. Director (WEC) concluded that Sri Lankan Airlines did not have Complaint Committee as per law of this land i.e. either guidelines laid down by Apex Court in Vishaka Vs State of Rajasthan or under the POSH Act. The defence of the respondent in 313 Cr.P.C. statement is that they had a committee as per their SPASH Policy. It is submitted that SPASH Policy or any committee constituted thereunder does not qualify the test unless it is constituted as per section 4 of the POSH Act. It can be seen that the respondent claimed to have a committee consisting of Persons from Sri Lanka and only one person from NGO from India was taken. This is clear contravention of Section 4 of the POSH Act. In the present case there is serious non implementation of India Laws. The accused is liable to be convicted.

11. Ld. Counsel for accused company argued that the Hon'ble Apex Court, while passing the judgment in "Vishakha Vs State of Rajasthan : AIR 1997 SC 3011", issued the guidelines for prevention of sexual harassment of women in workplaces. The said guidelines provided that all employers or persons-in-charge of workplace should take appropriate steps to prevent sexual harassment. The guidelines further provided for criminal proceedings against the conduct under the Indian Penal Code

and disciplinary action under the Relevant Service Rules. The central/state governments were also requested by the Hon'ble Supreme Court to consider adopting certain measures including legislation to ensure that the guidelines so laid down were also observed by the employers in private sector, but as such no punishment of the employer was provided in the said judgment for failing to implement the said guidelines.

12. That the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into force after receiving the assent of the president on 22.04.2013. Section 26 of the said act provided that the employer, on his failure to constitute an internal committee or to take action under section 13, 14 and 22 of the Act or on his contravening of other provisions of the Act or rules, shall be punishable with fine which may extend to Rs.50,000/-. It is an admitted fact before 22.04.2013, there was no provision for punishment of the employer.
13. That in the complaint filed before this Hon'ble court, it has been alleged in the para 2 of 'brief facts of the case' that the alleged incident took place on 08.10.2009 and after the handing over of the transfer letter to the complainant on 09.12.2010 (para 5 of 'brief facts of the case') and after the rejection of all the representations of the complainant against the said transfer (paras 06 and 08 of the 'brief facts of the case'), the complainant gave a written complaint for the first time on 28.09.2011 (wrongly mentioned as 28.11.11 in para 9 of the brief facts of the case') through e-mail to the HHR of the respondent Company (admitted by the complainant during her cross- examination conducted on 23.08.2017). It

is important to mention here that in her said first complaint dated 28.09.2011, the date of the alleged incident was mentioned as 27.10.2010 which was changed by the complainant to 08.10.2009 in her complaint given on 20.02.2012 (without seeking any permission of the authorities and without even notifying the said change of date, as admitted by the complainant in her cross-examination conducted on 06.12.2017 apparently after coming to know that the accused was not in India on 27.10.2010 and had reached India from Sri Lanka only in the evening on that day) to the respondent company in a proper format under the Special Policy Against Harassment of the respondent company.

14. That admittedly (by the complainant in the cross examination conducted on 06.12.2017), on 26.03.2012, the respondent company through its company secretary informed the complainant that the internal committee formed by the company had reviewed the complaint under Special Policy Against Harassment and found it to be time barred/ untrue. It was also admitted by the complainant in her cross examination conducted on 03.02.2018 that the chairperson of the internal committee (which conducted the proceedings) forwarded the message to her.
15. That has also been admitted by the complainant in her cross examination conducted on 23.08.2017 that after the findings given by the internal committee formed under the Special Policy Against Harassment of the respondent company, the complainant filed a writ petition before the Hon'ble Delhi High Court and on the first hearing before the Hon'ble Court, the respondent company appeared and made a statement that another committee in conformity with the Sexual Harassment of Women



at Workplace (Prevention, Prohibition and Redressal) Act, 2013 had been constituted (only on the asking of the complainant) and even the complainant had been invited to join the proceedings.

16. That it has also been admitted by the complainant in her cross examination conducted on 03.02.2018 that the internal committee formed under the guidance of the Hon'ble Delhi high Court dismissed the complaint of the complainant in 2014 and an appeal had been filed by the complainant against the said findings which is pending disposal before the Industrial tribunal.
17. That Sh. Chintaka Weerasinghe, the Authorized Representative of the respondent company appeared before this Hon'ble court as DW-I on 28.08.2019 and produced on record the copy of the mail dated 23.09.2005 sent by the respondent company to its employees (and proved the same as EXHIBIT DW-113) thereby informing in respect of the launch of a Special Policy Against Harassment with effect from 01.10.2005. He also proved the message of the Chief Executive Officer of the respondent company to the staff as EXHIBIT DW- 1/4. DW-I also proved the Special Policy Against Harassment of the respondent company as EXHIBIT DW- 1/5 and the e-mail dated 25.09.2008 sent by the respondent company to all its employees (thereby informing regarding the new members of the internal committee appointed under its Special Policy Against Harassment) as EXHIBIT DW- 1/6.
18. That as per the averments/admissions made by the complainant in her complaint/ evidence recorded by this Hon'ble Court, the first ever complaint was made by her on 28.09.2011 pursuant to which an internal

committee was formed by the respondent company under its existing Special Policy Against Harassment which gave its findings in March 2012. Admittedly, the complainant preferred an appeal against the said findings and on her appeal being dismissed, she preferred a writ petition before the Hon'ble Delhi High Court in April 2014 for formation of another internal committee. The respondent company again acceded to the demands of the complainant and formed another internal committee in accordance with Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and further changed the constitution of the same under the supervision of the Hon'ble Delhi High Court.

19. That first of all, admittedly, the special Policy Against Harassment of respondent company was in place since 2005 and admittedly, the proceedings were conducted by the said internal committee on the complaint of the complainant in February-March, 2012. Therefore, the respondent company cannot be said to have contravened the guidelines of the Hon'ble Supreme Court of India. Secondly, the respondent company didn't contest the plea of the complainant before the Hon'ble Delhi High Court in 2014 to form another internal committee in accordance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It is important to mention here that Special Policy Against Harassment has been in existence in the respondent company and whenever any complaint is received, the members of the proposed internal committee are named from a panel of members to probe the complaint and give the findings. It

is further important to mention here that the members of the internal committee formed in 2014 were even changed partially under the guidance/ supervision/directions of the Hon'ble Delhi high Court. Therefore, the respondent cannot be said to have contravened any provision of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. That it is also a fact that Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into force on 22.04.2013 and its effect is prospective in nature. There is not even any allegation of the complainant that any complaint was filed by the complainant or anyone else after 22.04.2013 or that the respondent company didn't form an internal committee. The complainant cannot be allowed to take a plea that the respondent company should keep on forming internal committees (out of the panel of members under its special policy Against Harassment) even when there is no complaint regarding the harassment. The existing Special Policy Against Harassment of the respondent company is very clear and transparent which is not rigid and caters to the requirements of Sexual Harassment of Women at Workplace Act, 2013 even by way of change in the constitution of the proposed internal committee, if required, which can be discerned from the acts of the respondent company in this case. That the respondent company, therefore, has neither contravened any provision much less section 4 or section 34 or section 24 or section 22 or any other provision of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and consequently, no fine can be imposed against the respondent

company under the law.

20. I have heard the arguments of the parties and sought some clarifications today and I am of the opinion that the only issue involved in this case is whether as on 11.11.2014 i.e. after the Sexual Harassment for Women at work place (Prevention, Prohibition and Redressal Act) 2013 came into force, the accused company had internal complaint committee as mandated u/s 4 of the Act, functioning at its Delhi division or in India as per the Indian Laws or POSH Act ?

21. Section 2(0) of the POSH Act defines " workplace" as including :

any department, organization, undertaking. establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or local authority or a Government company or a corporation or a co-operative society.

any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational educational, entertain mental, industrial, health services or financial activities including production, supply, sale, distribution or service.

22. Section 4 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act,2013 states that :

1) Every employer of a workplace shall, by an order in writing, constitute a committee to be known as the "Internal Complaint Committee":

Provided that where the offices or administrative units of the workplace

are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

2) The Internal Committee shall consist of the following members to be nominated by the employer, namely,-----

a) Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;

b) not less than two members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge.

c) one member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer'.

4. The Member appointed from amongst non-governmental organizations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

5) Where the Presiding Officer or any Member of the Internal Committee-----

- (a) contravenes the provisions of Section 16;
- (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- (c) he has been found guilty in any disciplinary proceedings or disciplinary proceeding is pending against him; or
- (d) has so abused his position as to render his continuance in office prejudicial to the public interest,

Such Presiding officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

23. Section 26 of the POSH Act provides for penalty for non-compliance with provisions of the Act and states that :

- I ) where the employer fails to-
  - a) Constitute an Internal Committee under sub-section (1 ) of section 4;
  - (b) take action under sections 13, 14 and 22; and
  - (c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder'

he shall be punishable with fine which may extend to fifty thousand rupees.

24. In this case from the perusal of file, it is clear that as on 11.11.2014 the accused company did not had the internal committee as per section 4 of POSH Act. Ex.CW1/5 the additional affidavit filed by Ms. Somya Gupta, the then Director, Department of Women and Child, Govt. of NCT of Delhi has proved the same. Also, the minutes of meeting dated 07.10.2014, in the chamber of Deputy Director concluded that Srilankan Airline did not have complaint committee as per law of this land. Not only this, even the Hon'ble Delhi High court in Writ Petition (civil) 3994/2014, observed that the respondent company did not have any permanent committee in terms of Vikshkha guidelines. The Hon'ble High Court further observed in para no.3 & 4 that : (3) *“We may notice that with effect from 09.12.2013, the Sexual Harassment of Women at work place (Prevention, Prohibition and Redressal) Act 2013 has come into force to fill the vacuum which had required the Supreme Court to lay down the guidelines in Vishaka vs State of Rajasthan (1997) 7 SCC. The said Act, by Section 4 thereof requires every employer of a workplace to constitute a Committee to be known as the “Internal Complaints Committee”. Section 5 of the said Act requires the appropriate Government to notify a District Magistrate or Additional District Magistrate or Collector as a District Officer for every District and Section 6 requires the District Officer to constitute in the District, a “Local Complaints Committee”. Section 9 provides that any aggrieved woman may make a complaint of sexual harassment at workplace to the*

*Internal Complaints Committee, if so constituted or to the local committee in case the Internal Complaints Committee has not been constituted by the employer. Section 26 makes an employer, who fails to constitute an Internal Complaints Committee, punishable with fine which may extend to fifty thousand rupees for the first offence and other punishments for subsequent offences. The Supreme Court in para 18 of the judgment in **Vishakha** observed that the guidelines, directions and norms laid down and issued in the judgment “would be binding and enforceable in law until suitable legislation is enacted to occupy the field” and which has been done now: (4) We are of the opinion that once the law aforesaid has come into force, all including Foreign Airlines having a place of work in India and to whom such law may be applicable, are expected and required to comply therewith and there is no need for this Court to issue any direction for the law to be complied with. If any of such Foreign Airline does not comply with the law, it shall do so at its own peril:*

25. Even the respondent in his statement u/s 313 Cr.P.C. has submitted that the company had a committee as per their SPASH policy. This policy is not in compliance with Section 4 (1) of Sexual Harassment of Women (Prevention Prohibition and Redressal Act) 2013.
26. In view of above discussion, I am of the considered opinion that the accused has violated Section 4 (1) of Sexual Harassment of Women (Prevention Prohibition and Redressal Act) 2013 and is liable to be convicted u/s 26 of the same.
27. Therefore, in ultimate analysis as a result of trial, the **accused Srilankan**



**Airlines is convicted** for the offence u/s 26 of Sexual Harassment for Women at work place (Prevention, Prohibition and Redressal Act) 2013.

**28. Put up for arguments on sentence on 07.01.2021**

**Announced in the open court  
on 21<sup>st</sup> December 2020**

**(DEV SAROHA)  
Metropolitan Magistrate-05,  
Patiala House Courts, New Delhi**