

Employee Who Destroyed Evidence Loses Shot At Payout

By **Adele Redmond**

Law360, London (February 15, 2023, 6:45 PM GMT) -- A former employee of a major U.K. wholesaler who was sexually harassed by the company's head of finance has lost her £673,000 (\$810,000) claim for compensation because she deliberately destroyed evidence, a tribunal has ruled, calling her behavior "plainly scandalous."

Sun Mark Ltd., its owner Rami Ranger and chief executive Harmeet Ahuja dodged a claim by Ramandeep Kaur despite a 2020 ruling that the company was vicariously liable for Kapil Sharma's misconduct, according to a Feb. 8 judgment published on Tuesday.

But Kaur made a fair hearing impossible by destroying a journal she claimed that she kept at the time and a phone containing a recorded call between herself and Ranger — a member of the upper house of the U.K. Parliament — the judgment said.

She appeared to have either destroyed them shortly after a hearing in October 2022, where it became clear she would be required to disclose them, or lied about having destroyed them at all, Employment Judge Oliver Hyams ruled in a decision striking out the compensation claim.

"Whichever of those two things she did, it was designed to prevent an order for the inspection of the mobile telephone or the notebook being made or, if it was made, having any effect," he wrote.

Suzanne McKie KC, Sun Mark's counsel, said the ruling was "a huge vindication" of the company, which will now argue for the original tribunal judgment to be reconsidered over its concerns about Kaur's credibility.

"The short point is when you destroy evidence as a claimant, you run the risk of not only losing on remedy but also liability," McKie said. "It's a cautionary tale, not just for claimants but for all parties in litigation that anything you think could be relevant at any stage should be retained. Give it to your lawyer — don't keep it yourself."

Representatives for Kaur said she plans to appeal, and noted that findings that Sharma harassed Kaur and that Ranger discriminated against her in the 2018 phone call are no longer open to challenge.

An Employment Appeal Tribunal ruling in February 2022 overturned several findings against Ranger and Ahuja.

Its ruling that Ahuja had pressured Kaur not to report the harassment did not properly consider all the evidence, the appeals tribunal ruled. It added that claims Ranger called Kaur insolent, a liar and an "absolute troublemaker" for alleging sexual harassment were wrongly cast as retaliatory, rather than reflecting his feelings about how she raised the complaint.

It also overruled the employment tribunal's finding that Kaur's allegations were made in good faith, saying she "exaggerated and distorted matters," including claiming that Sharma threatened her physical safety, job and visa as an Indian national in the U.K.

As the remedy hearing approached, Kaur claimed she no longer had the notebook she kept during her employment at Sun Mark or the recording of the 2018 phone call with Ranger in which he insulted her.

She said her husband burnt the notebook because it was "deeply sensitive and troubling" and

that she threw the phone into a river because it contained "intimate pictures" with her husband before they were married, according to the remedy judgment.

"In our religion and culture we are not allowed to have physical relationships before marriage," she explained to the tribunal. "If my fiancé had withdrawn from getting married, or I had, he could have leaked those photos."

Judge Hyams said these explanations were "nonsensical," because Kaur had already been engaged for six years at the time she claimed to have destroyed the evidence — and "appeared to be a fabrication."

Kaur argued that the evidence was irrelevant to deciding a remedy for her harassment, but Judge Hyams said it might have indicated how much she suffered emotionally.

"That would be of considerable importance in determining the level of compensation," he wrote.

Sun Mark and the other respondents are represented by Suzanne McKie KC of Farore Law Ltd.

Kaur is represented by Susan Chan of 42 Bedford Row, instructed by Cameron Clarke Lawyers.

The case is Kaur v. Sun Mark Ltd. and others, case number 3334669/2018, in the Employment Tribunal.

--Editing by Joe Millis.