

Neutral Citation No. - 2025:AHC:110749

Reserved on : 03.07.2025

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Court No. - 79

Case :- APPLICATION U/S 482 No. - 34539 of 2010

Applicant :- T. Baskaran

Opposite Party :- State of U.P. and another

Counsel for Applicant :- Sushil Shukla

Counsel for Opposite Party :- G.A.,Lakshman Singh

Hon'ble Prashant Kumar,J.

1. Heard Sri Sushil Shukla, learned counsel for the applicant and Sri S.D. Pandey, learned A.G.A. for the State-O.P. No.1. None appeared on behalf of O.P. no.2 even in the revised reading of cause list.

2. The instant application under Section 482 Cr.P.C. has been preferred by the applicants with a prayer to quash impugned order dated 05.07.2010 passed by Chief Judicial Magistrate, Jalaun at Orai in Criminal Complaint Case No.3335 of 2009 (Bhoop Singh vs. Nadeem Akhtar and others) under section 406, 323, 504, 506 IPC, P.S.Kotwali Orai, District-Jalaun or to stay the effect and operation of the impugned order during pendency of this application.

FACTS OF THE CASE

3. The applicant herein was employed as Factory Manager at factory premises of M/s Hindustan Unilever Ltd, a multinational company situated at Orai in District-Jalaun. The complainant herein is a firm namely M/s Machart Engineering which was providing contractual services to the applicant's company for various job works. His employee/supervisor namely Ranjeet Singh was looking after day to day work of the firm at the factory premises. Since the job of the complainant's firm was not satisfactory, his services were terminated vide notice dated 14.03.2009 and he was also advised to remove all his equipment from the

factory premises. This notice was received by the complainant and he agreed to remove the same by 15.04.2009. Thereafter, his employee/supervisor, Ranjeet Singh removed all the equipments from the premises of the applicant's company.

4. Aggrieved from termination of contract and with object to browbeat the officers of the company, on 24.11.2009 the complainant has instituted a criminal complaint in the court of Chief Judicial Magistrate, Orai against three persons namely (i) Nadeem Akhtar, the then Engineer of the company (ii) the applicant, the then Factory Manager and (iii) Ranjeet Singh, his employee/supervisor, with the allegations that he was giving services to the company since 2009 and that while he had gone to District Beena (State of M.P.), his said employee/supervisor in connivance with the officers of the company i.e. accused no.1 and 2 have formed another firm, which started taking contractual works of the company by illegally using his firm's equipment and tools. He also alleged that on 06.03.2009, his said employee/supervisor was given ₹70,000/- by way of salary for the labourers, which he had not distributed to them and over which he had received complaints from labourers. He also alleged that ₹7,00,000/- was due over the company relating to his contractual works, which these accused persons were attempting to withdraw in favour of the new firm. On 09.03.2009, the complainant was prevented from entering the factory premises of the company by the Security Guard and after much protest, when he went inside, the accused persons had hurled abuses upon him and had threatened him to face consequences, if he again tries to enter the premises. He also alleged that the accused persons were using his equipment and tools worth ₹15,00,000/- in the factory premises.

5. Thereafter, the concerned Magistrate held preliminary enquiry on the impugned complaint wherein the complainant was examined u/s 200 Cr.P.C. and later, he produced his three witnesses namely, Ved Prakash (PW-1), Sunil

Goswami (PW-2) and Umesh Singh (PW-3), who were examined u/s 202 Cr.P.C. The complainant repeated his allegations as made in his complaint, whereas his witnesses merely stated that when the complainant had left for Beena (State of M.P.), he had entrusted his works to his employee/supervisor accused Ranjeet Singh, who later started taking job works from the company on his name with the help of other accused/officers of the company. During preliminary enquiry, surprisingly the complainant chose not to press the complaint against accused no.1 i.e. Nadeem Akhtar, the then Engineer of the complainant for no particular reason.

6. Finally, vide order dated 05.07.2010, the Chief Judicial Magistrate, Orai at Jalaun took cognizance of the offences as defined u/s 406, 323, 504, 506 IPC only against the remaining arraigned accused persons namely, his employee/supervisor Ranjeet Singh and the applicant and summoned them to face prosecution by drawing the impugned criminal proceeding of Criminal Complaint Case No.3335 of 2009 u/s 406, 323, 504, 506 IPC, P.S. Kotwali Orai at Jalaun (Bhoop Singh vs. Nadeem Akhtar and Anr.). The summoning order dated 05.07.2010 has been challenged by means of the instant application.

7. Learned counsel for the applicant submitted that no allegation has been made as against the applicant that anything was entrusted to him, which he had misappropriated thus basic ingredient of the criminal misappropriation as defined u/s 405 IPC was lacking and therefore, no offence u/s 406 IPC was spelled out qua him, thus the Magistrate ought not have summoned him under such penal section. To buttress his argument, he has placed reliance on judgment passed by Hon'ble Supreme Court in the matter of **Om Prakash Gupta vs. State of U.P.**¹, **V.P. Shrivastava vs. Indian Explosives Ltd.**² and

1 1957 SCR 423

2 (2010) 10 SCC 361

Indian Oil Corporation v. NEPC India Ltd.³ The relevant extract from the judgment passed in **V.P. Srivastava's case (supra)** is quoted below :-

“36. Therefore, in relation to the offence under Section 405 IPC, the first ingredient that needs to be established is "entrustment." In Common Cause v. Union of India this Court held that

“168. A trust contemplated by Section 405 would arise only when there is an entrustment of property or dominion over property. There has, therefore, to be a property belonging to someone which is entrusted to the person accused of the offence under Section 405. The entrustment of property creates a trust which is only an obligation annexed to the ownership of the property and arises out of a confidence reposed and accepted by the owner.”

37. However, it must be borne in mind that Section 405 IPC does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event. (See Jaswantrao Manilal Akhaney v. State of Bombay¹⁴ and Indian Oil Corpn. v. NEPC India Ltd.)

38. In the instant case, there is nothing in the complaint which may even suggest remotely that IEL had entrusted any property to the appellants or that the appellants had dominion over any of the properties of IEL, which they dishonestly converted to their own use so as to satisfy the ingredients of Section 405 IPC, punishable under Section 406 IPC.”

8. He next submitted that the court below while issuing summons has failed to appreciate that necessary ingredient of the offence u/s 504 and 506 IPC are lacking even if the allegations are believed to be ex facie true. To buttress his argument he has placed reliance on the judgment passed by Hon'ble Supreme Court in the matter of **Vikram Johar vs. State of U.P.**⁴ The relevant extract from aforesaid judgment is reproduced below:-

“20. We need to notice Sections 503, 504 and 506 IPC for appreciating the issues, which has come up for consideration, which are to the following effect:

503. Criminal intimidation-*Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of anyone in whom that person is interested, with intent to cause alarm to that person, or to*

3 (2006) 6 SCC 736

4 (2019) 14 SCC 2071

cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threats, commits criminal intimidation.

Explanation. A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

504. Intentional insult with intent to provoke breach of the peace. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

506. Punishment for criminal Intimidation. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc. and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either 217 description for a term which may extend to seven years, or with fine, or with both."

21. Section 504 IPC came up for consideration before this Court in *Fiona Shrikhande v State of Maharashtra*. In the said case, this Court had the occasion to examine ingredients of Section 504 IPC, which need to be present before proceeding to try a case. The Court held that in the said case, the order issuing process was challenged by filing a criminal revision. This Court held that at the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused. In para 11, following principles have been laid down: (SCC pp. 48-49)

"11. We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a prima facie case has been made out or not to issue process by the Magistrate. The law as regards issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. The Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the

inherent probabilities apparent on the statement made in the complaint. In Nagawwa v. Veeranna Shivalingappa Konjalgiz, this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all advert to any defence that the accused may have."

22. In para 13 of the judgment, this Court has noticed the ingredients of Section 504 IPC, which are to the following effect: (Flona Shrikhande cases, SCC p. 49)

13. Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC."

23. In another judgment i.e. Manik Taneja v. State of Karnataka, this Court has again occasion to examine the ingredients of Sections 503 and 506. In the above case also, case was registered for the offence under Sections 353 and 506 IPC. After noticing Section 503, which defines criminal intimidation, this Court laid down the following in paras 11 and 12: (SCC pp. 427-28)

11. A reading of the definition of "criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without

any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC."

In the above case, allegation was that the appellant had abused the complainant. The Court held that the mere fact that the allegation that accused had abused the complainant does not satisfy the ingredients of Section 506 IPC.

24. Now, we revert back to the allegations in the complaint against the appellant. The allegation is that the appellant with two or three other unknown persons, one of whom was holding a revolver, came to the complainant's house and abused him in filthy language and attempted to assault him and when some 219 neighbours arrived there the appellant and the other persons accompanying him fled the spot. The above allegation taking on its face value does not satisfy the ingredients of Sections 504 and 506 as has been enumerated by this Court in the above two judgments. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The mere allegation that the appellant came and abused the complainant does not satisfy the ingredients as laid down in para 13 of the judgment of this Court in Fiona Shrikhandes,

25. Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are the ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edn. with regard to proof of offence states the following:

"... The prosecution must prove:

(1) That the accused threatened some person.

(ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested;

(iii) That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat."

A plain reading of the allegations in the complaint does not satisfy all the ingredients as noticed above.

26. On the principles as enumerated by this Court in Fiona Shrikhande and Manik Taneja, we are satisfied that ingredients of Sections 504 and 506 are not made out from the complaint filed by the complainant. When the complaint filed under Section 156(3) CrPC, which has been treated as a complaint case, does not contain ingredients of Sections 504 and 506, we are of the view that the courts below committed error in rejecting the application of discharge filed by the appellant. In the facts of the present case, we are of the view that appellant was entitled to be discharged for the offence under Sections 504 and 506 IPC.”

9. He further submitted that the instant matter is completely covered under category (7) of the law laid down by Hon’ble Supreme Court in the matter of **State of Haryana vs. Bhajan Lal**⁵ wherein it has been held that where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, then the Court should, in its inherent power, entertain an application filed under section 482 Cr.P.C. (now 528 B.N.S.S.).

10. He next submitted that more so, withdrawal of the impugned complaint as against one of the arraigned accused namely, Nadeem Akhtar by the complainant even before passing of the impugned summoning order when the role assigned to all the three implicated accused persons were similar and composite, renders his complaint frivolous and abuse of the process of the court. The concerned Magistrate ought not to have entertained the impugned complaint on that sole ground alone. This by itself gives ground for quashing of the complaint proceedings against the applicant. To buttress his argument, he has placed reliance on the judgment passed by Supreme Court in the matter of **K. Sitaram vs. CFL Capital Financial Service Ltd.**⁶ The relevant extract of the judgment is quoted below:-

5 1992 Suppl. SCC 335

6 (2017) 5 SCC 725

“However, from the admitted position, it is evident that the complainant respondent Company in its wisdom had withdrawn the complaint against the two persons, who were the officers of Kotak Mahindra Bank Ltd. from a common complaint made against four persons. However, we do not find any reason as to why the remaining two persons, being the present appellants, who were the officers of State Bank of Travancore at the relevant time, are being prosecuted. Hence, the complaint against the present appellants does not survive and in the interest of justice the same is liable to be quashed and is accordingly quashed.”

11. Learned counsel for the applicant submitted that the complainant has not made the company as a party and without making the company a party, no summons could have been issued against the applicant, who is just an employee of the company. To buttress his argument he has placed reliance on the judgment passed by Hon’ble Supreme Court in the matter of **Shiv Kumar Jatia vs. State of NCT of Delhi**⁷ wherein the Hon’ble Court has categorically held that an employee of the company cannot be made an accused, when the company is not a party.

12. Per contra, learned A.G.A. vehemently opposed the application and contended that pure disputed questions of facts are involved in the instant case which cannot be seen in an application under Section 482 Cr.P.C.. He submitted that all the allegations levelled against the applicant can only be adjudicated after adducing evidence before the trial court.

13. Heard learned counsel for the parties and perused the record.

14. It is apparent that the complainant was doing job work in the company of the applicant. It seems that when his services was not found satisfactory and it was terminated and awarded to someone else, the complaint being aggrieved by such termination, had filed the instant complaint case, which is nothing but pure abuse of process of law.

15. Herein no allegation has been made that the applicant has misappropriated anything which is entrusted to him by the complainant and

7 (2019) 17 SCC 193

hence, no offence under section 406 IPC is made out against the applicant as per ratio laid down in **V.P. Srivastava's case (supra)**.

16. Hon'ble Supreme Court in the matter of Bhajan Lal's case (supra) has laid down the guidelines under which circumstances the Court should, in its inherent power, entertain an application under Section 482 Cr.P.C. The guidelines are as follows:-

"(i) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(vii) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17. In my opinion, the instant application falls under the guidelines laid down by the Hon'ble Supreme Court in **Bhajan Lal's case (supra)**. Further, it

is a fit case for interference as the proceedings initiated against the applicant is malicious and has been done as pure abused of process of law.

18. Apparently the complaint was filed out of vengeance as he has lost the contract, and the entire endeavour to file the complaint was to browbeat the applicant and to put undue pressure to get back the contract. Hence, the criminal proceeding initiated against the applicant is malicious and done to wreak vengeance.

19. Accordingly, the instant application is **allowed** and entire proceedings of Criminal Complaint Case No.3335 of 2009 (Bhoop Singh vs. Nadeem Akhtar and others) under section 406, 323, 504, 506 IPC, P.S.Kotwali Orai, District-Jalaun is hereby **quashed**.

Order date :11.07.2025
Manish Himwan