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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 19th February, 2016

+ **CRL.M.C. 670/2013 & CrI.M.A.No.2185/2013**

M.T.KOM

..... Petitioner

Represented by: Mr.R.P.Luthra, Mr.Sourabh Luthra and
Mr.Shimansh Singh, Advocates.

Versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Represented by: Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State/R1.
Mr.Dheeraj Nayal and Mr.Ashok
Mishra, Advocates for R2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

CRL.M.C. 670/2013

1. The present petition has been directed against the summoning order dated 11.01.2011, whereby the learned Metropolitan Magistrate summoned the petitioner under Section 506(I) of the Indian Penal Code, 1860 ('IPC').

2. Brief facts of the case are that the respondent No.2 filed a case under Section 156(3) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') and complaint under Section 200 Cr.P.C., however, the learned Magistrate declined to issue directions under Section 156(3) Cr.P.C. and directed the respondent No.2 to lead evidence. Accordingly, the said respondent

examined himself as CW1 and Shri Jagdish Prasad as CW2.

3. The aforesaid impugned order was passed on the complaint of respondent No.2 on the allegations that on 24.08.2004 when he had gone to Circle No.9, Food & Supply Department, Hauz Khash, New Delhi, to purchase renewal form of Ration Card, Dealing Clerk, C.H. Vunga, Inspector, who was sitting on the counter asked him to pay Rs.25 extra for Rs.1 renewal form. The respondent No.2 went again on 25.08.2004 and waited for his turn but the said official refused to give him a form without paying Rs.25 extra. Accordingly, the said complainant purchased the renewal forms from Sr. No.2351400 to 2351507 (total 107 forms) through one Jagdish, who had also come to purchase the renewal forms, and Rs.25 extra were paid for each of the renewal form. Thereafter, a complaint was made to the Chief Minister, Minister for Food Supply Department, Central Food and Supply Minister, Police Commissioner and DCP as well as Food and Supply Commissioner through registered post.

4. It is further alleged that on 19.10.2004, one Sh.M.T.Com (petitioner herein), Area Circle Officer, Ms. Lalita Bhatia, FSO, Food & Supply Officer and Inspector C.H.Vunga came to the house of the complainant and threatened him with dire consequences if he did not withdraw the complaint.

5. Learned counsel appearing on behalf of the petitioner submitted that first of all there is no allegation against the petitioner that he demanded extra amount of Rs.25 for renewal form. However, the said allegations are specifically made against the Dealing Clerk C.H.Vunga. Therefore, there was no question of the petitioner approaching the complainant and

threatening him to withdraw the complaint. Moreover, the petitioner was on leave on 19.10.2004, i.e., the day when the threat was alleged to be extended to the complainant by the petitioner alongwith officers mentioned above. Thus, the complaint against the petitioner is false and to harass him.

6. Learned counsel further submitted that the petitioner was a Circle Officer at the relevant time and now he has been promoted to the post of Deputy Commissioner in the Department. It is not the case of the respondent No.2 that when the Dealing Clerk C.H.Vunga asked him to pay Rs.25 extra for the renewal form, the complainant approached the petitioner and despite that the petitioner had not taken any action against the said Clerk. Though the complainant sent the complaint to the various authorities but had not made any complaint either in writing or orally to the petitioner, who was the Supervisor and overall Incharge of that Circle.

7. Moreover, complainant Gyan Chand (CW1) stated that he had purchased the renewal form through one Jagdish (CW2), who was also there and had come to purchase the renewal forms. Whereas Jagdish (CW2) stated that on 25.08.2004, he alongwith complainant went to Circle 9, Food and Supply Office, Hauz Khas, New Delhi, where C.H. Vunga and M.T. Com (petitioner) were present in the office. However, complainant (CW1) did not state in his statement that petitioner was present in the office on 25.08.2004. Moreover, CW2 stated that on 19.10.2004, when the threat was extended, he was sitting with CW1 at his residence at 486, Hardev Puri, Gautam Nagar, New Delhi. Whereas, CW1 has not stated this fact also that CW2 was present at his residence.

8. Learned counsel submitted that if the statements of CW1 and CW2 are read together and believed to be true, then also considering the material contradictions as noted above, the petitioner cannot be convicted. Moreover, CW1 and CW2, being neighbours and interested witnesses, concocted the story against the petitioner just to harass him. Thus, continuation of the proceedings against the petitioner will be a sheer harassment and humiliation for an officer who is not involved in this case in any manner.

9. To strengthen his arguments, learned counsel for the petitioner has relied upon the case of ***Amulya Kumar Behera Vs. Nabaghana Behera @ Nabina and Ors. 1995 CrL.L.J. 3559***, wherein the Supreme Court observed as under:-

“7. Section 506, IPC deals with punishment for criminal intimidation. Section 503 defines the said offence. It has following essentials.

(1) Threatening a person with any injury;

(a) to his person, reputation or property ; or

(b) to the person or reputation of any one in whom that person is interested.

(2) The threat must be with intent; (a) to cause alarm to that person; or

(b) to cause that person to do any act which he is not legally bound to do as means of avoiding execution of such threat; or

(c) to cause that person to omit to do any act which that person is legally entitled to do as means of avoiding execution of such threat.

Therefore, intention must be to cause alarm to the victim and whether he is alarmed or not is really of no consequence. But material has to be brought on record to show that intention was to cause alarm to that person. Here expression of any words without any intention to cause alarm would not be sufficient to bring in application of Section 506, IPC. The gist of the offence is the effect which the threat is intended to have upon mind of person threatened. It is clear that before it can have effect upon his mind it must be either made to him by the person threatening or communicated to him in some way. The section has undergone a complete transformation since its first draft which, after enumerating certain offences such as murder, hurt, mischief, house breaking, unnatural offence and rape, made the offence inter alia, depend upon the causing of distress or terror to the person intimidated. (Clause 482). The word "distress" was naturally objected to, though the Law Commission defended its retention. (2nd Report, Section 417). The original clause was apparently taken from Russel's Work on Crimes and it was both disjointed and incomplete. The present section is practically new, and the substitute of the word "alarm" for distress and terror is intended to confine the offence only to cases where the effect thereof is to cause more pain than is covered by those words. The anxiety and mental anguish caused by an injury threatened may often be as or even greater than the actual injury. Lord Ellenborough said "To make it indictable, the threat must be of such a nature as is calculated to overcome a firm and prudent man...The Law distinguishes between threats of actual violence against the person, or such other threats as a man of common firmness cannot stand against and other sorts of threats". Intention is a mental condition which has to be gathered from the circumstances of the case. The threat must be intended to cause alarm from which it follows that, ordinarily, it would be sufficient for that

purpose. The degree of such alarm may vary in different cases, but the essential matter is that it is of a nature and extent to unsettle the mind of the person on whom it operates and take away from his acts that element of free voluntary action which alone constitutes consent. The case where the threat produces an alarm is comparatively a simple one, for all that has then to be proved is that threat was given and that the alarm was due to the threat; but where the threat has not that effect, it involves a question whether it was sufficient to overcome a man of ordinary nerves. The Court may hold it to be an empty boast, too insignificant to call for penal visitation of Section 506. "Intimidate" according to Webster's Dictionary means "(1) to make timid, make afraid, overawe; (2) force or deter with threats or violence, cow". Threat referred to in the section must be a threat communicated or uttered with intention of its being communicated to the person threatened for the purpose of influencing his mind. Question whether threat amounts to a criminal intimidation or not does not depend on norms of individual threatened if it is such a threat as may overcome ordinary free will of a man of common firmness. "Threat" is derived from Anglo-Saxon word "threoton to lire", (harass). It is the declaration of an intention to inflict punishment, loss or pain on another, "injury" is defined in Section 44. It involves doing of an illegal act. If it is made with intention mentioned in the section, it is an offence. Whether threat was given with intention to cause alarm to the person threatened has to be established by evidence to be brought on record. Material in that regard is totally lacking in the case at hand. Though learned JMFC has erroneously held that the complainant having not got terrified the section has no application, yet he is right in his conclusion that no evidence was there to show that the accused person intended to cause alarm to the complainant."

10. On the other hand, learned Additional Public Prosecutor appearing on behalf of the State/respondent No.1 after taking instructions from Mr. Dheeraj Nayal, Advocate for respondent No.2, submitted that at the time of the summoning the court is to evaluate the evidence only with a view to find out whether any prima facie case is made out against the accused. In the present case, the complainant has examined himself as CW1 and another witness as CW2 and specifically stated that on 19.10.2004, the petitioner alongwith other officers mentioned above came to his residence and threatened him to withdraw the complaint otherwise to face consequences. Accordingly, the learned Trial Court has rightly issued the summons against the petitioner under Section 506 (1) IPC.

11. Learned Additional Public Prosecutor further submitted that the present petition has been filed pre-maturely as the charges have not been framed and the petitioner would be at liberty to argue the matter at the time of hearing arguments on charge. Moreover, there is no discrepancy or illegality in the impugned order passed by the learned Trial Court.

12. I have heard the learned counsel for the parties.

13. Facts remain that the complainant has specifically made allegations against Dealing Clerk C.H. Vunga that he demanded an amount of Rs.25 extra on a renewal form. Perusal of the statements of CW1 and CW2 clearly show that neither any demand was made by the petitioner nor the said witnesses ever approached the petitioner for redressal of their grievance. Since the said complaint was not made against the petitioner, therefore, there was no occasion for the petitioner to approach the respondent No.2 and pressurize him to withdraw the complaint. Moreover,

on the alleged date, i.e., 19.10.2004, the petitioner was on leave and he did not even come to the office, whereas as per the allegations other officers had accompanied the petitioner to the residence of the complainant.

14. Though CW2 states that on 25.08.2004, the petitioner was sitting with Clerk C.H. Vunga, however, this fact has not been stated by the complainant CW1. Likewise, CW2 states that on 19.10.2004, the day when the complainant was allegedly threatened by the petitioner, the said witness (CW2) was sitting at the residence of CW1, whereas, the complainant neither say so while deposing as CW1 nor the said fact finds mention in the complaint.

15. Considering the facts and circumstances of the case, even if the statements of the aforesaid witnesses are taken as true on the face of it, then also keeping in view the contradictions and discrepancies in their testimonies, I have no hesitation to say that above witnesses have concocted a story.

16. The law is well-settled that the jurisdiction to quash a complaint, F.I.R. or a charge-sheet should be exercised sparingly and only in exceptional cases and Courts should not ordinarily interfere with the investigations of cognizable offences. However, the law is equally settled that where the allegations made in the F.I.R. or the complaint even if 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, the F.I.R. or complaint may be quashed in exercise of powers under Article 226 or inherent powers under Section 482 Cr.P.C.

17. In the leading case of *State of Haryana Vs. Bhajan Lal & Ors.*, reported in *1992 Supp. (1) SCC 335*, certain guidelines were issued for the exercise of these powers by the Courts. In guideline number 3 it was laid down that where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and do not make out a case against the accused, the Court may quash the F.I.R. as well as the investigations. A note of caution was added by observing that the power of quashing a criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest of rare cases. It was held that the Court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint.

18. Section 482 Cr.P.C. empowers this Court to make such orders as may be necessary to secure the ends of justice in exercise of the inherent powers. Section 483 Cr.P.C. casts a duty upon every High Court to exercise its continuous superintendence over the Trial Courts to ensure that there is an expeditious and proper disposal of cases. Article 227 of the Constitution also confers on this Court the power of superintendence over all subordinate courts in relation to which it exercises jurisdiction. The paramount consideration behind vesting such wide power of superintendence in this Court is to keep the path of justice clear of obstructions which would impede it. It is the salutary duty of this Court to prevent the abuse of the process, miscarriage of justice and to correct the irregularities in the judicial process.

19. Therefore, considering the facts and circumstances of the case and the settled legal position, this Court has no hesitation in concluding that the complaint filed by respondent No.2 against the petitioner, on the basis of which the petitioner has been summoned, is an abuse of the process of law with a view to harass the petitioner.

20. Accordingly, in exercise of powers under Section 482 Cr.P.C., I hereby set aside the impugned summoning order dated 11.01.2011 and the emanating proceedings therefrom if any. Consequently, the complaint against the petitioner is quashed.

Crl.M.A.No.2185/2013 (for stay)

With the disposal of the petition itself, the present application has become *infructuous*. The same is dismissed accordingly.

**SURESH KAIT
(JUDGE)**

FEBRUARY 19, 2016
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