

\$~

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

Judgement delivered on: 14th January, 2016

+

CRL.M.C. No. 3657/2010

PAWAN KUMAR BHATIA & ANR. Petitioners
Represented by: Mr.Sujoy Kumar, Adv.

versus

MADHU BHARTI Respondent
Represented by: Mr. Rakesh Tikku, Sr Adv.
with Mr.Jaspreet Singh
Kapur, Adv.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the present petition under Section 482 of the Cr P C, petitioners seek directions thereby quashing of the Criminal Complaint Case No.567/1/09 titled 'Smt.Madhu Bharti v. Mr.Pawan Kumar Bhatia & Another' instituted by respondent against them.

2. The petitioners further seek direction thereby setting aside order dated 18.09.2010 passed by learned Metropolitan Magistrate-03, North District, Tis Hazari Courts, Delhi whereby the cognizance of the offences punishable under Sections 3(1) (ix) (x) (xi), 2(vii), 4, 8(B) of the SC and ST Prevention of Atrocities Act, 1989 (hereinafter referred as the said Act) was taken against them.

3. Learned counsel appearing on behalf of petitioners submits that

the above noted complaint filed against petitioners, is a pure counter-blast to the charge-sheet and consequential departmental enquiry initiated against the respondent on account of her misbehaviour/misconduct. However, the respondent has filed a complaint case under the provisions of the said Act, as noted above, which is a purely misconceived, malafide and vexatious one.

4. Also submitted that respondent joined the S.D. Hari Mandir Girls Senior Secondary School, Des Raj Bhatia Marg, Nabi Karim, New Delhi as PGT Hindi teacher on 06.07.2001. The respondent during period of probation sought an 'no objection certificate' from the school for applying for the post of PGT (Hindi) with Delhi Subordinate Staff Selection Board (DSSSB) on 23.05.2002. The said school did not grant the NOC to respondent and the same was communicated to her on 28.05.2002. However, the aforesaid school received a notice on 30.05.2002 from the National Commission for SC and ST (hereinafter referred as the Commission) on a complaint made by the respondent due to the non-grant of NOC by the school. On 03.06.2002, the respondent communicated the school that notwithstanding the refusal to grant NOC, she had applied for the job with DSSSB. In the month of December, 2002, the respondent made an application to the school claiming the income tax rebate on payment of the house loan. On 28.01.2003, the respondent filed a complaint against the school with the Commission on the premise that school had refused to give income tax rebate on the repayment of loan. Thereafter, in the month of February, 2003, a legal notice was sent by the respondent. In the month

of September, 2005 respondent sent a communication to the school stating therein that Smt.Sona Babbar had used un-parliamentary language against her and had called her 'scheduled caste' in the presence of 40-50 staff members and accordingly sought action against Smt.Sona Babbar. Thereafter, in the month of August, 2007 respondent filed an application for grant of abortion leave. However, the same was refused. Consequently, in the month of February, 2008, respondent sent a legal notice as her abortion leave was refused. On 10.04.2008, respondent sent a communication to the chairman of the school alleging that an extra installment towards the GPF was being deducted and if proper action is not taken, she threatened to lodge the complaint with the Commission and the Deputy Director of Education. On 23.04.2008, respondent sent communication to the chairman of the school alleging harassment as she belongs to scheduled caste. Thereafter, on 30.04.2008, respondent appeared before the managing committee of the school and tendered apology for her conduct.

5. Learned counsel further submitted that on 04.08.2008 respondent threw a bundle of papers at the principal in the staff room in the presence of staff members. Accordingly, a show cause notice was issued to her on 06.08.2008. Consequent upon receipt of reply to the show cause notice, managing committee of the school decided to initiate a disciplinary enquiry against respondent. On 06.09.2008, manager of the school lodged a complaint against the respondent for threatening the principal of school with ACP and SHO, police station Sadar Bazar, Delhi. On 10.09.2008, respondent lodged a complaint to

the SHO, police station mentioned above against the petitioners. Accordingly, an enquiry was conducted on the direction of the Deputy Director of Education, Central District, New Delhi and hold that the allegations levelled by the respondent against the petitioners were false. Thereafter, second enquiry was conducted by a newly constituted team on the direction of the Deputy Director of Education, and held that there has neither been discrimination nor victimisation of the respondent. The third enquiry was also conducted on 20.07.2009 by a newly constituted team at the direction of Deputy Director of Education, which team also stated that there has been no discrimination.

6. Learned counsel for petitioner further submitted that in addition to above, the investigation report dated 05.08.2009 filed by the police on the complaint of respondent shows that charges pressed by the respondent have not been proved. Being aggrieved, respondent filed a Writ Petition (C) No.12525/2009 before this Court to seek quashing of the charge sheet issued against her, which was dismissed as withdrawn on 20.10.2009. In the month of November, 2009, another enquiry was conducted by the Nodal Officer of the Commission at the instance of the Deputy Director of Education, who filed an adverse report against the petitioners.

7. It is also submitted that even the allegations mentioned in the complaint and the deposition of CW1, CW2 and CW3 are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out any case against the petitioners. The

allegations made in the complaint are so absurd inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against petitioners. The statement of the respondent to the police dated 10.09.2008 do not even mentions about the presence of her husband and Smt.Sona Babbar, who happened to be the vice principal of the school at the time of the alleged incident at about 12.50PM on 10.09.2008 and the said witnesses were produced only after in the complaint proceedings. The testimony of CW2 Mr.Vinod Bharti, husband of respondent does not mention about the presence of any other person at the time of alleged incident on 10.09.2008. The testimony of CW3 Smt.Sona Babbar, does not mention about the presence of CW2 Mr.Vinod Bharti at the time of alleged incident. There is no role has been attributed to the petitioners and hence there is no violation of the any sections of the Act.

8. Learned counsel for petitioners further submitted that it is the mandate of Section 3 (1) (xi) of the Act that insult or intimidation has to be in place of public view, but absence of any corroboration and public witness clearly negates the application of said section. There is no allegations of any assault or use of force in the complaint as also the testimony thereby clearly reflecting that no case is made out under Section 3 (1) (xi) of the Act. _

9. It is further submitted that since the date of appointment the respondent had been making the false and baseless allegations and has been threatening the action against the school as well as petitioners.

10. In addition to above, the provision of Section 3 (2) (vii) and 4 of the Act are applicable in case the persons against whom allegations have been made are the public servants. The term 'public servant' has been defined in Section 21 of the IPC and both the petitioners are not covered within the said definition. This aspect itself shows that total non-application of mind by learned Trial Court in summoning the petitioners under said two Sections.

11. To strengthen his arguments, learned counsel for petitioners has relied upon the decision in ***Mahadev Prasad Kaushik v. State of Uttar Pradesh and Ors. (2008) 14 SCC 479***, wherein the Supreme Court held as under:-

“18. So far as threat said to have been administered by the appellant herein, it may be noted that the learned Magistrate, in the order dated 9-1-2007 did not even refer to such threat. In the said order, the learned Magistrate, dealing with the incident, dated 4.7.2001, observed that the complainant took his father Buddha Ram to the clinic of the appellant and the appellant gave three injections to the patient. Within some time, Buddha Ram died. Over and above the complainant, three witnesses also stated about the said fact. The clinic of the appellant was also ordered to be closed. There was, therefore, 'sufficient evidence' to issue process against the appellant in relation to the said allegation. But in the operative part of the order, the learned Magistrate said:

Summons for the offence punishable under Sections 304, 504, 506 of the Penal Code are issued against the accused Dr. Mahadev. Applicant is directed to file the process fee within 7 days. Summons be issued on filing the process fee. File be listed on 26.02.2007 for appearance.

From what is stated hereinabove, it is clear that in the

body of the order, there is no whisper about the threat alleged to have been given by the appellant to the complainant nor the learned Magistrate recorded even a prima facie finding as to such threat. The High Court also, in the impugned order, does not refer to such intimidation. On the contrary, the High Court observed that the allegations were sufficient to summon the appellant for causing death of Buddha Ram under Section 304, IPC.

19. In our considered opinion, therefore, the submission of the learned Counsel for the appellant is well-founded that on the facts and in the circumstances of the case, no summons could have been issued to the appellant-accused for commission of offences punishable under Sections 504 and 506 IPC. We uphold the contention and quash proceedings initiated against the appellant herein for offences punishable under Sections 504 & 506 IPC.”

12. Further relied upon decision in ***Zandu Pharmaceutical Works Ltd. & Ors. V. Mohd. Sharaful Haque and Ors. (2005) 1 SCC 122***, wherein the Apex Court held as under:

“10. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an

instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.”

13. Learned counsel for petitioners submitted that in ***R.P. Kapur v. State of Punjab, AIR 1960 SC 866*** the Supreme Court summarised some categories of cases where inherent powers can and should be exercised to quash the proceedings where the allegations constitute the offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

14. In case of ***State of Haryana v Bhajan Lal 1992 Supp (1) SCC 335*** the Apex Court has held that the scope of exercise of power under Section 482 of the Code and categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent the abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail and category (7) reads as under:-

“7. Where a criminal proceeding is manifestly attended with mala fide 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.”

15. Learned counsel submitted that the present case is fully covered by the category (7) as observed by the Apex Court in ***Bhajan Lal (supra)***.

16. Learned counsel further submitted that respondent had

suppressed the fact that there is a departmental enquiry against her and charge-sheet has already been issued to her and the committee constituted on the advice of Deputy Director of Education, has held against her which has been suppressed by the respondent. Thus, the complaint made by respondent is based on the suppression which is liable to quashed.

17. To buttress his arguments, learned counsel has relied upon the decision of the Apex Court in ***Dalip Singh v. State of Uttar Pradesh and Ors. (2010) 2 SCC 114***, wherein the Apex Court observed as under:

“1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahinsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not

entitled to any relief, interim or final.”

18. Learned counsel for petitioners submitted that the complaint against the petitioners is false, concocted and on the basis of suppression of facts and due to vendetta against them. Learned Trial Court while issuing the summons vide dated 18.09.2010 has not applied its mind and issued the process in mechanical manner which is liable to set aside.

19. Mr.Rakesh Tikku, learned senior counsel appearing on behalf of respondent submitted that the present petition is under Section 482 of the Cr P C for quashing of the criminal complaint and the proceedings arising therefrom. However, it is settled law that power to quash criminal cases under Section 482 of the Cr P C should be exercised very sparingly with circumspection and that too in rare cases. The Court will not be justified in embarking upon the enquiry as to reliability, genuineness or other wise of the allegations made in the FIR or in the complaint. The Court has to proceed entirely on the basis of the allegations made in the complaint and the documents annexed thereto. The Court is not justified to examine the correctness or otherwise of the allegations.

20. He also submitted that this Court in ***Harsh Khurana v State, 2005 (2) JCC 1082*** held that the purpose of exercising the powers under Section 482 of the Cr P C will have to proceed entirely on the basis of allegations made in the complaint or the documents accompanying the same per-se. The Court has no jurisdiction to

examine the correctness or otherwise of the allegations. The Supreme Court in *State of Bihar v Murad Ali Khan and Ors, 1988 Scale (2) 933*, pointed out that jurisdiction under Section 482 of the Cr P C has to be exercised very sparingly and with caution.

21. Learned senior counsel has also relied upon the decision of this Court rendered in *Angad Paul and Ors. v. M.D. Jindal, 122 (2005) DLT 44*, wherein this Court held as under:

“8. In the present case there can be no dispute that there is no legal bar against institution or continuance of the complaint. Nor can it be said that the allegations in the complaint taken on its face value and accepted in their entirety do not constitute an offence. There are allegations of forgery as well as criminal intimidation apart from conspiracy and criminal breach of trust. It cannot be said that no evidence has been produced before the Magistrate to justify issue of summons. As stated earlier three witnesses were examined by the Magistrate and the Magistrate after examining the statements of the three witness and hearing the counsel has passed the impugned order. The petitioners' case is that the complaint is false, that no offence is made out, that the complaint is highly belated and that it is mala fide. The main argument for quashing the complaint is that the complaint is manifestly mala fide, aimed at wreaking of vengeance with a view to spite the accused due to private and personal grudge.

9. It is true that the complainant has been unseated and, therefore, he may have a grudge against the accused But can it be said that complaint itself discloses that it is manifestly attended with mala fides and is instituted with ulterior motive of wreaking vengeance? The mere fact that the complainant has been unseated does not necessarily make his complaint bad. The complainant has made allegations of repeated acts of forgery and

falsification of documents.”

22. I have heard learned counsel for parties.

23. The factual matrix leading to the institution of criminal case by respondent before learned Trial Court against petitioners in brief are that on 10.09.2008 during the school hours, the petitioners in presence of public used abusive language like *Churi and Chamari* to respondent. The respondent in order to prove her case has examined herself as CW1. According to her deposition on 10.09.2008 petitioner No.1 had called her at school gate in connection with some official information. She provided the information to him but after having the same he started shouting and abusing without any reason or rhyme. He further threatened her to withdraw the reply to show cause notice served upon her and during this he called her *churi-chamari*. The petitioner No.2 was also present with petitioner No.1 and supported him on his caste based statement being made against the respondent. Moreover, petitioner No.2 also used some insulting words of castism against respondent.

24. Respondent further examined her husband Mr.Vinod Bharti as CW2 and one Smt.Sona Babbar, vice principal of the said school as CW3, in support of her case.

25. On perusal of the testimony of aforesaid witnesses, it appears that the complainant as well as two witnesses have supported the case of respondent. The aforesaid witnesses have specifically stated that they heard the petitioners using abusive language like *churi – chamari*

to respondent. The aforesaid material was available with learned Magistrate, who after relying upon the same took the cognizance for the above mentioned offences. However, did not issue summons under any of offence punishable in Indian Penal Code. Thus it seems that the trial court has applied judicial mind, while issuing summons against petitioner.

26. It is not out of place to mention here that respondent has been facing harassment from the petitioners and for redressal of grievances she had been exercising the legal rights by moving applications to the higher officials which is permissible under law, but that does not mean that the incident in question had not happened and the petitioners have not used abusive language, as mentioned above. Moreover, the petitioners have failed to bring anything which can demolish the deposition of the witnesses mentioned above.

27. It is pertinent to mention here that in the enquiry report dated 23.11.2009 prepared by Mrs. Indra Rani Singh, Deputy Director of Education, finds mention that on 12.11.2009 the petitioner No.1 and one Jaswant Singh Bhatia – a member of the managing committee of the school appeared at 10.30AM for enquiry. The manager i.e. petitioner No.1 requested for 5 minutes time before the enquiry, which was granted. The said manager took more than 20 minutes to explain the excellent relationship and atmosphere that prevailed in the school and tried to impress upon the Nodal Officer/Enquiry Officer that only the respondent was spoil spot. The manager was reminded that he had already taken more time and had nothing much to convey. Again

proceedings started and the first issue regarding non-issuance of NOC to respondent for applying in DSSSB was taken up. The reasons forwarded by the manager were in contravention of the rules which says that an employee can apply for issuance of NOC number of times during his/her probation period. Second complaint regarding the rejection of abortion leave was taken up. In the reply, the manager stated that matter of leave of respondent was referred to the department, but the petitioner No.1 could not produce the documents thereof on 12.11.2009. He was further questioned as to how many cases were referred to the department, to which the manager showed his displeasure and kept on repeating that the respondent had filed complaint in the police station against him and also had filed a Writ Petition in this Court. Petitioner No.1 was requested to restrain himself and advised him not to interrupt and answer the questions asked. In spite of the efforts pacifying him, Mr.Jaswant Singh Bhatia, 'the member' and the petitioner had left the room exhibiting his attitude. The matter was adjourned to 16.11.2009 and abortion leave issue was again taken up and file was examined. Head Clerk informed that case of abortion leave was forwarded to the department because the respondent had not appended her signature on the medical certificate and the petitioner interrupted again and stated that it was sent because the certificate deemed doubtful and suspicious because she had not appended her signatures so it cannot be ascertained whether the certificate belongs to respondent or somebody else. The said officer scrutinised the medical certificate and observed that the certificate was issued by Dr.Rashmi Garg, MBBS, M.No.30164 in the name of

respondent. During hearing on all dates it was observed that principal and manager (petitioners herein) were very vocal and did not allow anybody to speak and when the facts emerged one after another on 17.11.2009 also the petitioners left showing that the case was one sided without waiting for the enquiry to conclude. The said nodal officer inter alia, observed as under:

“a) NOC was given after a gap of one year only after the completion of probation which was very delayed thus denying a chance to the complainant to apply to DSSSB.

b) The manager did not restrain to his managerial post rather infringed and commended on day to day affairs of the school which is the prerogative of the principal only. He issued Memos which should have been issued by the school principal.

c) The rebate in income tax on housing loan and the interest was given to Ms. Madhu after she approached the higher authorities only.

d) The case of grant of abortion leave to Ms.Madhu could have been considered sympathetically but was not considered simply because she had not signed the certificate and this was the only case that was referred to the higher authorities.

The attitude of the manager and the principal was found to be very negative towards Ms.Bharti because she approached the Hon’ble NCSC Commission and had filed complaints against the Manager.”

28. Be that as it may. Learned Trial Court has issued summons against petitioners for the offences punishable under Sections 3 (1) (ix) (x) (xi), 2(vii), 4, 8(B) of the said Act.

29. Section 4 of the Act reads as under:-

“4. Punishment for neglect of duties.—Whoever, being a public servant but not being a member of a Scheduled

Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.”

30. Undisputedly, the above Section is applicable on a public servant. In the present case, the petitioner No.1 is manager of the school and petitioner No.2 is the principal of that very school. The school mentioned above is a private school, thus, its manager and principal are also private individuals and do not come under the definition of public servant. Thus, Section 4 of the said Act is not applicable in the present case. However, the learned Trial Court has issued summons under the aforementioned provisions wrongly. Consequently, the order dated 18.09.2010 is set aside to that extent.

31. Now, we resort to Section 3 (1) (xi) of the Act reads as under:-

“assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty;”

32. Admittedly, in the complaint and in the deposition of CW1 – complainant as well as CW2 and CW3 there are no allegations of assault, however, learned Trial Court has issued summons against the petitioners under aforementioned Section, which is untenable in the eyes of law. Accordingly, the order dated 18.09.2010 is also set aside to that extent.

33. This Court while dealing with identical issue and scope of discharge of accused in criminal case in ***Arvind Kejriwal & Ors v Amit***

Sibal & Anr 212 (2014) DLT 489 concluded as under:-

“16. If the Trial Court has to frame the notice under Section 251 Cr.P.C. where no prima facie case is made out against the petitioners, the hearing at the stage of notice under Section 251 Cr.P.C. would be a mere farce and would result in failure of justice. In warrant cases whether arising out of police report or complaint, the learned Magistrate is empowered to discharge the accused if no prima facie case is made out against him under Section 239 Cr.P.C. whereas in summons cases, such a power is given to the Magistrate only in cases other than complaint cases meaning thereby that the Magistrate has to frame the notice and proceed with the matter even if no prima facie case is made out against the accused. As such, the denial of the remedy of discharge to the accused in summons cases at the stage of notice under Section 251 Cr.P.C. is clearly discriminatory and therefore, this case is squarely covered by the principles laid down by the Supreme Court in Maneka Gandhi (supra).

20. In view of the authoritative pronouncements of the Supreme Court in Bhushan Kumar (supra), Krishna Kumar Variar (supra) and Maneka Gandhi (supra) and of this Court in Raujeev Taneja (supra), Urrshila Kerkar (supra) and S.K.Bhalla (supra), the accused are entitled to hearing before the learned Metropolitan Magistrate at the stage of framing of notice under Section 251 Cr.P.C in all summons cases arising out of complaints and the Magistrate has to frame the notice under Section 251 Cr.P.C. only upon satisfaction that a prima facie case is made out against the accused. However, in the event of the learned Magistrate not finding a prima facie case against the accused, the Magistrate shall discharge/drop the proceedings against the accused. Since there is no express provision or prohibition in this regard in the Code of Criminal Procedure, these directions are being issued in exercise of power under Section 482 read with Section 483 Cr.P.C. and Article 227 of the Constitution

to secure the ends of justice; to avoid needless multiplicity of procedures, unnecessary delay in trial/protraction of proceedings; to keep the path of justice clear of obstructions and to give effect to the principles laid down by the Supreme Court in Bhushan Kumar (supra), Krishna Kumar Variar (supra) and Maneka Gandhi (supra).”

34. As per settled law, once the summons are issued against accused in criminal cases, the proceedings cannot be disturbed until and unless the order is illegal and perverse.

35. It is admitted fact that charges have not been framed against the petitioners. This Court cannot hold a mini trial. The petitioners may argue their case before learned Trial Court at the time of arguments on charge. Even otherwise, after going through the complaint as well as deposition of witnesses mentioned above, there is a sufficient material to summon them and try in accordance with law; barring the provisions of Section 3 (xi) and 4 of the Act. Accordingly, learned Trial Court is directed to proceed further in the matter for the remaining offences.

36. In view of the above discussion and settled position of law, the present petition is partly allowed.

37. No order as to cost.

**SURESH KAIT
(JUDGE)**

JANUARY 14, 2016
M/jg