

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

% Judgment reserved on: 13th September, 2018
Judgment delivered on: 24th September, 2018

+ CRL.M.C. 692/2014

HARI KISHEN SHARMA

..... Petitioner

versus

STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rakesh Khanna, Sr. Advocate. with Mr. Shyam Dev Lal & Ms. Drishti Rathore, Advocates.

For the Respondent: Mr.Kamal Kr.Ghai, Addl. PP for the State with SI Sapan Dr. (Maj) J.C. Vashista and Ms. Yashika Sood, Advs. for R-2.

CORAM:-

HON'BLE MR. JUSTICESANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner seeks quashing of FIR No.41/2013 under Sections 506/509 of the IPC, Police Station Paschim Vihar and also impugns charges framed against the petitioner on 18.11.2013 under Section 506(1) and 509 IPC.

2. Subject FIR was registered on the complaint of respondent No.2 that she is a teacher and the principal of the College who is also the brother of her father-in-law usually talked dirty with her on account of which she used to feel ashamed and usually he threatened

her that in case she disclosed to anybody about his conduct, she would have to face the consequences of the same.

3. On the subject complaint, FIR was registered and consequently charge sheet filed and on perusal of the same, Trial Court has framed charges, against the petitioner, under Section 506(1) and 509 of the IPC.

4. Learned counsel for the petitioner contends that the charge framed is vague and not in accordance with the mandate of Section 212 of the Cr.P.C. It is further contended that the allegations are vague and the complaint is motivated as there was a history of dispute between the petitioner and his brother, the father-in-law of the complainant. Further, it is contended that the allegations do not raise any suspicion against the petitioner of having committed any offence under Section 506 or 509 of the IPC. Reliance is placed on the decision of the Supreme Court in *Inder Mohan Goswami & Another vs State Of Uttaranchal & Others*, 2007 (12) SCC 1 and *Mr. Robert John D'Souza & Ors. Vs. Mr. Stephen V. Gomes & Anr.* 2015(9) SCC 96.

5. Per contra, learned counsel for the respondent contends that the complaint made by the prosecutrix shows commission of the offence under Sections 506 and 509 and even if the charge framed is vague, evidence during trial would prove the allegations and the consequent guilt of the petitioner.

6. It would be expedient to refer to the FIR lodged on the complaint of the prosecutrix. Prosecutrix in her complaint has alleged as under:-

“The Principal of my college Dr. Hari Kishan Sharma s/o Shyam Sunder Sharma r/o D-16/128, Sec - 3 Rohini, who is my brother of father-in-law (Chachiya Sasur) in relation too, used to talk dirty with me for which I felt ashamed of being a woman. He also used to threaten me stating that if I ever told anything about his wrongdoings to anybody, then I will have to face dire consequences. A suitable legal action be taken against him.”

7. It is an admitted position that apart from what is stated in the FIR there is no evidence or supplementary statement given by the prosecutrix detailing as to when, where and what was stated by the petitioner. The only allegation is that he used to talk dirty for which she used to feel ashamed. What were the words used, gestures etc. have not been stated by the prosecutrix. Nor is the time, date and place stated by her.

8. The charge framed by the Trial Court on 18.11.2014 is as under:-

CHARGE

“That at an unknown date, place and time prior to 13.02.2013 within the jurisdiction of PS Paschim Vihar, you criminally intimidated the complainant Ms. Asha Rani to face the consequences in case any information is passed over to someone else and thereby committed an offence punishable U/s 506(1) IPC and within my cognizance.

Secondly, that at an unknown date, place and time prior to 13.02.2013 within the Jurisdiction of PS Paschim Vihar, you intended to insult the modesty of the complainant, abused her in a filthy language and also made indecent gestures intending that said gestures shall be seen by her and thereby committed an offence punishable U/s 509 IPC and within my cognizance.”

9. The charges framed state that “*at an unknown date, place and time prior to 13.02.2013.....*” Charge framed is clearly not in consonance with Section 212 Cr.P.C which mandates that the charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

10. The allegations levelled and the charge framed is clearly vague and do not sufficiently describe the commission of the offence and also do not give notice to the petitioner of the offence with which he is charged.

11. Section 506 prescribes punishment for criminal intimidation. Criminal intimidation has been defined in Section 503 IPC which reads as under:-

“503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to 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 threat, 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. Illustration A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation."

12. To constitute an offence under Section 503 IPC, the requirement is that one has to threaten another with injury to his person, reputation or property with the intent to cause alarm to that person or to 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 threat.

13. The prosecutrix in her complaint in the FIR has not averred that there was any threat of injury to person, reputation or property.

14. Section 509 IPC reads as under:-

"509. Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

15. The allegations made by the prosecutrix of the offence under Section 506, 509 are as vague as they can be. Prosecutrix has not stated as to what were the words uttered or gestures, actions or threat extended which would satisfy the requirement of Section 506 and 509 IPC.

16. Per contra, petitioner has contended that there was a history of dispute between the families and even prior to the lodging of the FIR, petitioner had made complaints to the Police Commissioner of threats from the family of the complainant. Further, it is contended that the complainant who was a teacher was asked to furnish documents that she had submitted at the time of her employment and the teaching experience certificate furnished by the respondent was found to be false. Faced with the consequence of an action being taken it is alleged that the subject complaint was filed which was motivated.

17. The Supreme Court in *Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135 has held as under:

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court

will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609]).”

18. For accused to face trial for an offence there has to be grave suspicion and not mere suspicion or an allegation. In the present case apart from bald allegations, evidence does not reveal grave suspicion of the petitioner having committed the offence under Section 506 or 509 IPC.

19. Supreme Court in *Inder Mohan Goswami* (supra) has laid down that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution and Courts cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak, no useful purpose is likely to be served by allowing a criminal prosecution to continue. Where the allegations in the first information report or complaint even if they are taken at their face value and accepted in their entirety do not prima

facie constitute the offence alleged or make out a case against the accused or where the criminal proceedings are manifestly attended with mala fide or where the proceedings are 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, the proceedings are liable to be quashed.

20. The judgment in the case of *Manohar M. Gilani Versus Ashok N. Advani*: AIR 2000 SC 202, relied on by learned counsel for the respondent is not applicable in the facts of the present case. In *Manohar M. Gilani*, High Court had quashed the complaints at the stage when investigation was still being carried on. Further, the investigation was being conducted consequent to directions issued by the High Court itself in an application filed in public interest. The Supreme Court found that in the order impugned therein, investigation into several serious allegations was being throttled.

21. In the present case, investigation is complete and charge sheet has been filed. Clearly, the said judgment is not applicable in the facts of the present case.

22. The allegations made by the respondent are vague and the evidence does not even raise suspicion, leave alone grave suspicion against the petitioner for having committed any offence under Section 506/509 IPC.

23. In view of the above, FIR No.41/2013 under Sections 506/509 of the IPC, Police Station Paschim Vihar and the consequent proceedings emanating there from are quashed. There shall be no order as to costs.

SANJEEV SACHDEVA, J

September 24, 2018

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