

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
952 CRIMINAL REVISION APPLICATION NO.1 OF 2022
DILIP MAHADU GADHARI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Shri. Datta A. Madake, Advocate for the applicant
Shri. V. S. Badakh, APP for the respondent/State

**CORAM : M. G. SEWLIKAR, J.
DATED : 5th January, 2022**

PER COURT :-

1. By this application, applicant has challenged the order of acquittal passed by the learned Magistrate and confirmed by the Appellate Court.

2. It is the case of the complainant that the applicant was working as Head-Master in Prabhodani Vidyalaya, Shelgaon, Tq. Kannad. On 10th June, 2010 at 5.30 p.m. work of fixing doors to the class rooms was in progress in the premises of the school. That time accused Ramesh Mangate came there and abused the informant. He manhandled informant and threatened to kill him if he remained on the spot and tried to fix the doors. The incident took place in front of the teacher and the employees of the

school. Informant went to the police station and lodged the report. However, police registered it as non-cognizable offence.

3. The learned Magistrate directed under Section 156(3) of the Code of Criminal Procedure to the police to register the offence. Accordingly, offence was registered and after conducting investigation charge-sheet came to be filed.

4. The learned Magistrate framed the charge under Sections 341, 448, 323, 504 and 506 of the Indian Penal Code. It was read over and explained to the accused who pleaded not guilty to it and claimed to be tried. His defence is of total denial.

5. The learned Magistrate after recording evidence of witnesses and hearing the accused passed the order of acquittal by the order dated 21st January, 2017. The learned Magistrate observed that there is change in the spot of the incident. The learned Magistrate observed that as per the complaint, spot of the incident is the office of the informant

whereas in the testimony, the complainant mentioned the spot as in front of class room No.10. The learned Magistrate further held that offence under Sections 504, 506 of the Indian Penal Code also could not be proved for want of cogent evidence.

6. Complainant carried appeal to the Sessions Court. The learned Additional Sessions Judge, Aurangabad by his judgment and order dated 10th December, 2021 dismissed the appeal holding that there is no evidence of manhandling. PW-2 Vishwas does not say anything about manhandling. The learned Additional Sessions Judge held that applicant did not specify the alleged foul words and therefore, offence under Section 504 of the Indian Penal Code is also not made out. Offence under Section 506 is also not made out. Therefore, the learned Additional Sessions Judge confirmed the order of acquittal.

7. Learned counsel Shri. Madke for the applicant submits that there is no change in the spot of the incident. He submits that class room No. 10 is adjacent to the office

of the informant. He submits that the incident took place in the school and the complainant has stated that the incident took place in front of class room No. 10 which means in the school itself. He submits that both the witnesses i.e. complainant and PW-2 have stated that the accused abused the informant in filthy language and also threatened the informant to kill him. He further submits that both the witnesses have stated that applicant was manhandled. He submits that all the ingredients of the offence under Sections 323, 504, 506 of the IPC are clearly made out.

8. So far as manhandling is concerned, learned Additional Sessions Judge has observed that PW-2 Vishwas does not say anything about manhandling. Admittedly, the relations between the applicant and the informant are strained. So far as offence under Section 504 of the IPC is concerned. Neither in the complaint nor in the oral testimony specific abuses are mentioned. In order to prove the offence Section 504 of the IPC specific abuses are required to be mentioned. Section 504 of the IPC reads as under:

"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."

9. Section 503 of the IPC deals with criminal intimidation. Section 503 of the IPC read 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."

10. Both these offences fell for consideration before the Hon'ble Supreme Court in the matter of ***Vikram Johar Versus State of Uttar Pradesh and Another, (2019) 14 Supreme Court Cases 207*** reads thus:

"22. In para 13 of the judgment, this Court has noticed the ingredients of Section 504 IPC, which are to the following effect : (*Fiona Shrikhande case*, 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."

11. In view of this decision of the Hon'ble Supreme Court it is clear that the intentional insult has to be of such a degree that it should provoke a person to break the public peace or to commit any other offence. The mere fact that the accused abused the complainant, as such is not sufficient by itself to warrant a conviction under Section 504 of IPC.

12. Similarly for attracting offence under Section 506 of IPC 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 words without any intention to cause alarm would not be sufficient to bring in the application of this section. No material has been placed on record to show that the intention was to cause alarm to the complainant. Merely mentioning that the respondents threatened the applicant is not sufficient to constitute the offence under Section 506 of IPC. There is no evidence to show that the alleged threat was with intention to cause alarm to the applicant. In this view of

the matter, following order is passed.

ORDER

- . Application is dismissed.

[M. G. SEWLIKAR, J.]

ssp