IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1357 of 2011
Jagadish Capoor And Anr.
-Vs-
The State of West Bengal & Anr.

For the Petitioners	: Mr. Sandipan Ganguly, Ld. Sr. Adv. Mr. Amitava Mitra Mr. Dipanjan Dutt
For the O.P. No. 2 (Amicus Curiae)	: Mr. Anand Keshari
Heard on	: 11.08.2023, 11.09.2023, 12.09.2023
Judgment on	: 12.12.2023.

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioners praying for quashing of the proceeding of Case No. C-4749 of 2010 (T.R. 589 of 2010) under Sections 506/504 of the Indian Penal Code pending before the Court of the Learned Judicial Magistrate, 10th Court, Alipore.

2. The petitioner no. 1 was the ex-chairman of HDFC Bank Ltd. (hereinafter referred to as the 'said bank') while the petitioner no. 2 was the Chairman-cum-Managing Director of the said bank. The petitioner no. 1 had worked for gain of the said bank situated at the address mentioned in the cause title and the petitioner no. 2 presently working for gain therefrom.

3. Case No. C-4749 of 2010 had been initiated on the basis of a petition of complaint filed by the opposite party no. 2 before the Court of the Learned Chief Judicial Magistrate, South 24-Parganas at Alipore.
4. The allegations levelled in the said complaint are, inter alia, to the effect that:-

    a) The complainant/opposite party no. 2 purchased a car sometimes back by availing financial assistance from the bank of the accused persons and out of the loan amount, part payment has been made and regarding the balance payment, the bank authority instituted a number of cases against the complainant and the matter is also pending for settlement before the Court.
    b) The opposite party no. 2 sent several letters to the bank authority for settlement of loan.
    c) The loan was sanctioned by the bank and the guarantor for the loan amount had been arranged by the bank at the time of purchasing the car.
    d) Recently the accused persons, specially the accused nos. 3 and 4, under the direction of the accused nos. 1 and 2 (present petitioners) used to abuse the opposite party no. 2 off and on over telephone.
    e) It was alleged that on 23.5.2010 one Mr. Banerjee came to the residence of the opposite party no. 2 in the evening at about 7:00 p.m. and informed the opposite party no. 2 that he was a

resident of 377, Lake Road. He further disclosed that the accused persons threatened him over telephone and gave him false information that a criminal case had been started against him and soon warrant of arrest would be issued against him. Mr. Banerjee also disclosed that the accused persons told him that police will apply 3rd Degree Method upon him and further directed him to make payment as per their direction.

f) It was further alleged that on 24.5.2010 at about 7-15 p.m., one Mr. Amitabha Dey and his wife, who resided at the 9th floor of Balaka Building, where the opposite party no. 2 was residing, narrated the same story as a result of which the opposite party no. 2 and his witnesses became afraid.

g) It was stated due to such acts of the accused persons, the complainant and other persons became were frightened and also restrained themselves from taking any further action.

h) The matter was informed to the Officer-in- Charge, Lake Police Station but till date no action had been taken by the said police officer and hence there was a delay in fling the said petition of complaint.

5. The Learned Chief Judicial Magistrate, South 24- Parganas at Alipore, upon receipt of the aforesaid petition of complaint, took cognizance of the offences and transferred the case to the file of the Learned Judicial Magistrate, 10th Court, Alipore for disposal.

6. The Learned Judicial Magistrate, 10th Court, Alipore, upon receipt of the case record, was pleased to examine the opposite party no. 2 on solemn affirmation on 20.11.2010. Upon perusal of the records and the documents filed, the Learned Magistrate was pleased to find out a prima facie case made out against the accused persons under Sections 504/506 of the Indian Penal Code and in such circumstances, issued process against them fixing 4.2.2011 for service return of such summons.
7. The petitioners stated for proper appreciation of the instant case certain facts were to be worth mentioning as follows:
    a) HDFC Bank is a banking financial corporation and provides financial assistance to individuals as also corporate bodies and also hires vehicles.
    b) The opposite party no. 2 approached the office of the said bank and represented to be interested in obtaining loan from the bank for the purpose of purchasing a car.
    c) Acting on the basis of the particulars provided in the application form, the said bank agreed to provide loan in favour of the opposite party no. 2 to the tune of Rs. 3,00,000/- for purchase of a Maruti Zen LXI car. A Car Loan Agreement was executed between the said bank and the opposite party no.2 wherein the terms and conditions governing such grant of loan was recorded. As per the terms of the said Agreement, the opposite party no. 2 agreed to accept the loan to the tune of Rs. 3,00,000/-, which was to be repaid by him through 60

installments of Rs.6,200/- each, the first of which was payable on 2.12.2004 and subsequent installments were to be paid in monthly intervals. It was further provided in the said Agreement that upon failure on the part of the borrower, being the opposite party no.2, to make payment as per Schedule provided under the Agreement, the bank would be entitled to take repossession of such vehicle without any further notice to the borrower.

Subsequently, the opposite party no.2 had taken further loan on the self same ground after making top up of the balance unpaid loan amount under the said agreement and executed thereof. a supplementary agreement in connection thereof.

d) After utilizing the said loan disbursed by HDFC Bank Ltd., the opposite party no.2 purchased a Maruti Zen LXI Car No. having Engine No. G108BN298326 and Chassis No. MA3EYD32S00785391, which was subsequently registered as WB-02T/0682.

e) The opposite party no. 2 made a few initial payments but thereafter failed to pay his outstanding dues. In such circumstances, the remaining dues of the opposite party no. 2, being Rs. 67,000/-, was re-structured and the opposite party no. 2 was required to pay his dues through 24 equal monthly installments of Rs. 3,312/- each. The first of such payments was to be made on 07.05.2006 and the subsequent payments were to be made on monthly intervals thereafter.

f) In such circumstances, the petitioner bank caused issuance of a notice dated 02.08.2008 upon the opposite party no.2 therein calling upon him to clear his outstanding dues, which was to the tune of Rs. 66,261/-, within 7 days from the date of receipt of the aforesaid notice.

g) Immediately upon receipt of the aforesaid notice, the present proceeding was initiated by the opposite party no. 2, as a harassive measure and in retaliation to the demand made by HDFC Bank Ltd., which had given rise to the present impugned proceeding.

8. The Ld. Advocate for the petitioners submitted as follows: from a perusal of the petition of complaint of the proceeding impugned it would appear that there exists no allegation against the petitioners that they had personally threatened to complainant or his witnesses. However, in his examination on solemn affirmation, recorded under Section 200 of the Code of Criminal Procedure, 1973, the opposite party no. 2 had tried to portray as if the petitioners had come to his house personally. Such allegation was patently absurd and inherently improbable as the petitioners, who were / are the ex-chairman and present managing director-cum-chairman of HDFC Bank Ltd. work from the office of the said bank at Bombay and it is patently improbable that the petitioners would come down to Calcutta to realize dues of Rs. 67,000/-. It was apparent that the initiation of the instant proceeding

was tainted with mala fide intent to harass the high officials of HDFC Bank Ltd. so that the bank did not pursue further action against the opposite party no.2.

9. It was apparent from the petition of complaint that the petitioners had their places of work at Mumbai, a place outside the territorial jurisdiction of the Learned Judicial Magistrate, 10th Court, Alipore. Section 202 of the Code of Criminal Procedure stated that any Magistrate, on receipt of a complaint which had been made over to him under Section 192 of Criminal Procedure Code, shall, in a case where the accused was residing at a place beyond the area in which he exercised his jurisdiction, postpone the issuance of process against the accused and either inquire into the case. himself or direct an investigation to be made by a police officer or by such other person as he thought fit, for the purpose of deciding whether or not there was sufficient ground for proceeding. It was thus apparent that in cases where the accused resided and/or had his place of work outside the territorial jurisdiction of the Court of the Magistrate, the Learned Magistrate was required to either inquire himself or to direct investigation by a police officer or any other person deemed fit by the Magistrate. The said requirement of law needed to be respected and complied with care and caution and not to be treated as a mere empty formality. From a perusal of the orders passed by the Learned Magistrate, it was apparent that the Learned Magistrate did not take any steps, as envisaged under Section 202 of the Code of Criminal Procedure. In view of the mandatory nature of the provisions of Section 202 of the Code of Criminal Procedure relating to issuance of process against persons residing

outside the jurisdiction of the Court of the Learned inquiring Magistrate, it is apparent that the issuance of process by the Learned Magistrate through the order impugned needed to be set aside and the proceeding impugned is also liable to be quashed forthwith for the ends of justice.

10. Summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. The order of the learned Magistrate summoning the accused must reflect application mind to the facts of the case and the law applicable thereto. The learned Magistrate also has to examine the nature of the allegations made in the complaint and the evidence both oral and documentary in support thereof and determine as to whether the same would be sufficient for the complainant to succeed in bringing home the charge against the accused. The learned Magistrate also has to carefully scrutinize the evidence brought on record and then examine if any offence had been committed by any of the accused. In the instant case it is apparent that the allegations made by the opposite party do not make out any contravention of the provision as alleged and as such the learned Magistrate by holding that a prima facie case has been made out against the petitioners regarding commission of the offence punishable under sections 504/506 of the Indian Penal Code has clearly reflected non-application of mind to the facts as disclosed in the complaint. In such circumstances the order issuing process against the petitioners needs to be set aside as also the proceeding impugned is liable to be quashed.

11. Section 504 of the Indian Penal Code provides punishment for the offence of intentional insult with intent to provoke breach of peace. In order to sustain

a charge against an accused for commission of such offence, it was necessary on the part of the complainant to show the nature of the insult provided by the accused to the complainant and it was also requisite that the complainant needs to aver that he had been provoked, thereby and that it was within the knowledge of the accused that such provocation was likely to cause the complainant to break public peace or to commit any other offence. At the outset, it was necessary to state herein that the contents of the petition of complaint of the present impugned proceeding did not in any manner reflect participation of the petitioners in commission of the offence at all. On the other hand, it was the allegation of the opposite party no. 2 that the Manager (Collection) and Manager (Car Loan) of the said bank had come to his residence and had been threatening and abusing him over telephone. In such circumstances, the petitioners cannot be held responsible for the action of the aforesaid persons even if, assuming for the sake of argument, that such acts were performed by them in course of their official duties. The petition of complaint as also the statements of the complainant were deficient of the nature of insult provided to the opposite party no. 2 as also the averments with regard to the knowledge of the accused persons that such insult was sufficient to provoke the complainant/opposite party no.2 to break public peace or to commit any other offence. In the absence of such averments, the charge under Section 504 of the Indian Penal Code was clearly misconceived.

12. Section 506 of the Indian Penal Code provides punishment for criminal intimidation. The offence of criminal intimidation has been defined under Section 503 of the Indian Penal Code which reads as follows:-

> "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."

13. From a perusal of the aforesaid provision, it would be apparent that mere providing of threat by the accused to the aggrieved is not sufficient unless such threat given by the accused caused alarm to that person or causes the aggrieved 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. In the instant case, there exists no such averment in the petition of complaint of the proceeding impugned that the threat given out by the petitioners has caused alarm to the opposite party no. 2 or that he did or did not do certain acts as the means for avoiding execution of such threat. It is thus apparent that the basic ingredients of Section 506 of the Indian Penal Code are not made out from the averments made in the petition of complaint and hence the impugned proceeding is liable to be quashed.

14. The Hon'ble Supreme Court of India in its much celebrated judgment in Chowdhury Bhajanlal Vs. Sate of Haryana has laid down certain criteria under which the Hon'ble High Courts may exercise their inherent powers in order to quash a proceedings pending before any court of law. The Hon'ble Supreme Court had held that where the averments made in the complaint do not make the offences as alleged or any offence at all, it would only be just and proper in the interest of justice to quash such proceedings as the same amounts to abuse of the process of Court. In the instant case the facts disclosed in the complaint do not make out any contravention of the provisions of Sections 384/386/387 of the Indian Penal Code and as such no offence under the said Sections can be said to have been made out. In such circumstances it would only be just and proper to quash the impugned proceedings.
15. The Learned Amicus Curie considered to the submissions of the Learned Advocate for the petitioners and stated that the dispute between the parties is civil in nature and the proceedings must be quashed.
16. In the case of ***Mohammad Wajid and Another Vs. State of U.P. and others[1],*** the Hon'ble Supreme Court observed that:

> *"25. Section 504 reads thus:-*
>
> > *"**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*

[1] 2023 SCC OnLine SC 951

either description for a term which may extend to two years, or with fine, or with both."

26. Section 506 reads thus: -

*"**Section 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 description for a term which may extend to seven years, or with fine, or with both."*

27. An offence under Section 503 has following essentials:-

1) Threatening a person with any injury;

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

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

2) The threat must be with intent;

(i) to cause alarm to that person; or

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

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

25. Section 504 of the IPC contemplates intentionally insulting a person and thereby provoking such person insulted to breach the peace or intentionally insulting a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of the *public peace or to commit any other offence. Mere abuse may not come within the purview of the section. But, the words of abuse in a particular case might amount to an intentional insult provoking the person insulted to commit a breach of the public peace or to commit any other offence. If abusive language is used intentionally and is of such a nature as would in the ordinary course of events lead the person insulted to break the peace or to commit an offence under the law, the case is not taken away from the purview of the Section merely because the insulted person did not actually break the peace or commit any offence having exercised selfcontrol or having been subjected to abject terror by the offender. In judging whether particular abusive language is attracted by Section 504, IPC, the court has to find out what, in the ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant.*

29. Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant. In King

Emperor v. Chunnibhai Dayabhai, (1902) 4 Bom LR 78, a Division Bench of the Bombay High Court pointed out that:-

> *"To constitute an offence under Section 504, I.P.C. it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. Public peace can be broken by angry words as well as deeds." (Emphasis supplied)*

30. A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant.

31. In the facts and circumstances of the case and more particularly, considering the nature of the allegations levelled in the FIR, a prima facie case to constitute the offence punishable under Section 506 of the IPC may probably could be said to have been disclosed but not under Section 504 of the IPC. The allegations with respect to the offence punishable under Section 504 of the IPC can also be looked at from a different perspective. In the FIR, all that the first informant has stated is that abusive language was used by the accused persons. What exactly was uttered in the form of abuses is not stated in the FIR. One of the essential elements, as discussed above, constituting an offence 16 under Section 504 of the IPC is that there should have been an act or conduct amounting to intentional insult. Where that act is the use of the abusive words, it is necessary to know what those words were in order to decide whether the use of those words amounted to intentional insult. In the absence of these words, it is not possible to decide whether the ingredient of intentional insult is present."

17. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***[2] the Hon'ble Supreme Court observed as follows :

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> > *(1) 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.*
> >
> > *(2) 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.*
> >
> > *(3) 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.*

[2] 1992 SCC(Cri) 426

(4) 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.

(5) 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.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (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 concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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."

18. The application filed by the complainant/opposite party mentioned the address of the petitioners namely Jagadish Capoor and Aditya Puri both of HDFC Bank to be working for gain at Mumbai beyond the jurisdiction of the Learned Trial Court. The Learned Chief Judicial Magistrate should have exercised the provisions enumerated under Section 202 of the Cr.P.C prior to the issuance of process against the present petitioners. Moreover, the contentions of the complainant in the complaint denote exaggeration and embellishment with regard to the conduct of the present petitioners coupled with criminal intention to commit the offence as aforesaid. There had been

loan agreement between the parties whereby, the opposite party no.2 had been a defaulter in repayment of the same and to abdicate the contractual liability resorted to such false implications evidently manifested in the complaint without any basis to the detriment of the petitioner harassive and pejorative in nature. The FIR is improbable in its contents and does not disclose any instance of commission of cognizable offence. It has become the proclivity of the defaulting customers to implicate bank authorities into frivolous and deceptive case in order to safeguard their personal interest and liabilities and further to disguise their own fault. The ingredients to constitute the offence u/s 506/504 of the Indian Penal Code are absent.

19. Lastly in view of the aforesaid discussion to allow and continue with the trial in connection with the proceedings pending before the Trial Court as aforesaid will resulted into a abuse of process and law.

20. In view of the above discussions, the proceeding of Case No. C-4749 of 2010 (T.R. 589 of 2010) under Sections 506/504 of the Indian Penal Code pending before the Court of the Learned Judicial Magistrate, 10th Court, Alipore is quashed.

21. The criminal revisional application being CRR 1357 of 2011 is allowed.

22. Accordingly, CRR 1357 of 2011 stands disposed of. Connected application, if there be any, also stands disposed of.

23. There is no order as to cost.

24. I record my appreciation for the able assistance rendered by Mr. Anand Keshari, Learned Advocate, as *Amicus Curiae* in disposing of the revisional application.

25. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
26. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)