IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3776 of 2019

Hironmay Chattopadhyay

Vs

Nasiruddin Mondal

For the Petitioner	:	Mr. Avik Ghatak, Mr. Saibal Dasgupta.
For the Opposite Party	:	None.
Heard on	:	24.04.2023
Judgment on	:	16.05.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding in case no. 44C of 2017, under Section 504/506 of the Indian Penal Code, pending before the Learned Additional Chief Judicial Magistrate, Kalyani, Nadia and also the order dated 22.11.2017 thereby issuing process against the petitioner.
2. The petitioner's case is that the petitioner is the Director of M/S Afraa Engineering Private Limited. Case No. 44C of 2017 has been initiated on the basis of a petition of complaint filed by the opposite party herein before the court of the Learned Additional Chief Judicial Magistrate, Kalyani, Nadia, alleging commission of offences by the petitioner, punishable under Sections 420/406/504/506 of the Indian Penal Code.
3. The allegations leveled in the said petition of complaint are inter alia to the effect that –
    a) That the accused is the proprietor of M/s Afraa Engineering Private Limited Company.
    b) It is alleged that on 04.05.2015 the accused made a contract with the complainant for the supply of construction materials and other works at Dakshin Dinajpur, Kushmandi. According to the said contract, the complainant had allegedly completed the construction work within a stipulated time period i.e. from

06.10.2015 to 12.12.2015 and the accused was very happy with the work of the complainant.

c) The complainant had raised bills dated 24.01.2016 for a sum Rs. 12,49,091/- vide bill Nos. 310, 311 and 312. In spite of the submission of the said bills, the accused was continuously delaying the payment. After repeated requests, the accused made a payment of Rs. 6,66,713/- on 14.03.2016. Then on 30.03.2016 the accused again made a payment of Rs. 1,97,313/- vide cheque no. 43568 on 30.03.2016 but cheque that was dishonoured. However, the complainant did not file a case for dishonor of cheque on the request of the accused.

d) The opposite party made several requests for the payment but the accused did not pay. After several requests the complainant sent a notice to the accused on 30.09.2016.

e) **It is alleged that the accused on 22.01.2017 came to the office of the opposite party and threatened him saying that his demand for the money was not rightful.**

f) It is further alleged by the Complainant that a sum of Rs. 5,82,378/- is due from the accused to the Complainant plus Vat and service tax.

4. On the basis of the said complaint the Learned Additional Chief Judicial Magistrate, Kalyani, Nadia, was pleased to register a complaint case against the petitioner.

5. After examining the complainant on oath, in terms of Section 200 of the Code of Criminal Procedure, the Learned Additional Chief Judicial Magistrate, Kalyani vide an order dated 03.03.2017 was pleased to direct the inspector-In-Charge of the Chakdah Police Station to inquire into the matter by himself or through any subordinate to him as per Section 202 of the Code of Criminal Procedure and to submit a report before issuance of process.
6. On 22.11.2017 upon perusing the said police report filed in terms of Section 202 of the Code of Criminal Procedure and considering the allegation in the said petition of complaint, the Learned Additional Chief Judicial Magistrate, Kalyani vide an order dated 22.11.2017 was **pleased to issue process against the petitioner under Sections 504/506 of the Indian Penal Code.**
7. That due to certain unavoidable circumstances the petitioner on certain dates could not appear before the Court of the Learned Additional Chief Judicial Magistrate, Kalyani. Subsequently vide an order dated 21.12.2017 Learned Additional Chief Judicial Magistrate, Kalyani was pleased to issue a warrant of arrest against the petitioner.
8. On 08.05.2018 the petitioner voluntarily surrendered before the Court of Learned Additional Chief Judicial Magistrate, Kalyani, Nadia, when the Learned Court was pleased to grant bail to the petitioner.

9. Again on 06.12.2018 Learned Additional Chief Judicial Magistrate, Kalyani was pleased to issue another warrant of arrest against the petitioner.

10. **That the opposite party on 30th March, 2016 on his letter head has given a written acknowledgement to the petitioner, to the effect that the opposite party has received his payment for the completed development activity of Kushmandi ILA (Id: RJIL-ROWB-KSMD-ILA-0001) after acceptance of proper rate and work order dated 4th May, 2015. As per the BOQ and Work Order the Opposite Party received a sum of Rs. 4,69,400/- (Rupees Four Lacs Sixty Nine Thousand Four Hundred) from Afraa Engineering Private Limited and outstanding balance amount of Rs. 1,97,313/- (Rupees One lac Ninety Seven Thousand Three Hundred and Thirteen) through cheque as full and final payment. The opposite party herein by suppressing all these material facts, approached the Learned Court with ulterior motive only to harass the petitioner. As such the impugned proceeding is liable to be quashed.**

11. The Complainant/Opposite Party also suppressed that against the said dishonoured cheque of Rs. 1,97,313/- (Rupees One Lac Ninety Seven Thousand Three Hundred and Thirteen) the petitioner has paid the exact amount through net banking on 15.04.2016, with an ulterior motive to harass the petitioner.

12. **Mr. Avik Ghatak, learned counsel for the petitioner** has submitted that the Complainant has made a false and incorrect statement against the petitioner. On 22.01.2017, the petitioner had gone to Birbhum District for a public function in Netaji Mela, Nanur, Birbhum. The petitioner as well as his Security and Driver were in Birbhum District and returned to Kolkata on 23rd January, 2017 at 08.00 p.m. This fact will be substantiated from a letter issued by the Secretary of the said Club.

13. The petitioner submits that there are no materials on record which justifies issuance of process against the petitioner under Sections 504/506 of the Indian Penal Code and in such circumstances, it would only be just and proper to quash the impugned proceeding.

14. The allegations are not sufficient to attract the offences under Section 504 and 506 of the Indian Penal Code and the Learned Magistrate should not have taken cognizance of the case. It is only an abuse of the process of Court and the same is liable to be quashed in the interest of justice.

15. **In spite of due service there is no representation on behalf of the opposite party.**

16. Vide order dated 22.11.2017, the court proceeded against the petitioner. **Order dated 22.11.2017** is reproduced here:-

"Order dated 22.11.2017

Complainant files hazira.

Perused the report submitted by the police u/s 202 Cr.P.C. dated 11.09.2017 along with annexed documents.

The report supports the allegation of the complainant and it is the specific case that accused person has committed some overt act on 22.01.2017 which falls within the jurisdiction of the Court and it constitutes an offence. Further, complainant should be given liberty to substantiate his claim.

Considering the complaint, initial deposition of the complainant on S.A. report u/s 202 Cr.P.C. filed by the police and other materials on record, I find prima facie case to proceed against the accused person u/s 504/506 IPC.

Let the case be proceeded against the accused person under the above quoted sections of law.

The accused person is already appeared in this case.

To 06.12.2017 for taking step by the accused person.

Sd/-
Additional Chief Judicial Magistrate
Kalyani, Nadia"

17. The Learned Magistrate found a prima facie case against the petitioner under Sections 504/506 of the Indian Penal Code.

18. **Mr. Ghatak** has relied upon the judgment of the Supreme Court in ***Vikram Johar vs State of Uttar Pradesh and Anr., (2019) 14 SCC 207, Criminal Appeal No. 759 of 2019, on April 26, 2019,*** wherein the court held:-

> *"**21.** Section 504 IPC came up for consideration before this Court in Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715 . In the said case, this Court had the occasion to examine ingredients of Section 504 IPC, which need to be present before proceeding to try a case. The Court held that in the said case, the order issuing process was challenged by filing a criminal revision. This Court held that at the complaint stage, the Magistrate is merely concerned with the allegations made out in the*

complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused. In para 11, following principles have been laid down: (SCC pp. 48-49)

"11. We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a prima facie case has been made out or not to issue process by the Magistrate. The law as regards issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. The Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint. In Nagawwa v. Veeranna Shivalingappa Konjalgi [Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736 : 1976 SCC (Cri) 507] , this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all adverting to any defence that the accused may have."

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 [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] , 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 [Manik Taneja v. State of Karnataka, (2015) 7 SCC 423 : (2015) 3 SCC (Cri) 132] , 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.

24. *Now, we revert back to the allegations in the complaint against the appellant. The allegation is that the appellant with two or three other unknown persons, one of whom was holding a revolver, came to the complainant's house and abused him in filthy language and attempted to assault him and when some neighbours arrived there the appellant and the other persons accompanying him fled the spot. The above allegation taking on its face value does not satisfy the ingredients of Sections 504 and 506 as has been enumerated by this Court in the above two judgments. 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 mere allegation that the appellant came and abused the complainant does not satisfy the ingredients as laid down in para 13 of the judgment of this Court in Fiona*

Shrikhande [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] .

25. *Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are the ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edn. with regard to proof of offence states the following:*

"… The prosecution must prove:-

(i) That the accused threatened some person.

(ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested;

(iii) That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat."

(emphasis supplied)

A plain reading of the allegations in the complaint does not satisfy all the ingredients as noticed above.

26. *On the principles as enumerated by this Court in Fiona Shrikhande [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri)*

> *715] and Manik Taneja [Manik Taneja v. State of Karnataka, (2015) 7 SCC 423 : (2015) 3 SCC (Cri) 132] , we are satisfied that ingredients of Sections 504 and 506 are not made out from the complaint filed by the complainant. When the complaint filed under Section 156(3) CrPC, which has been treated as a complaint case, does not contain ingredients of Sections 504 and 506, we are of the view that the courts below committed error in rejecting the application of discharge filed by the appellant. In the facts of the present case, we are of the view that appellant was entitled to be discharged for the offence under Sections 504 and 506 IPC."*

19. **In the present case** several documents filed by the petitioner show that the total dues have been paid by the petitioner and the opposite party/complainant has also issued a certificate to that effect on 30.03.2016. **The statement of accounts show that even the amount of the disputed cheque has been received by the opposite party on 15.04.2016.**

20. **The alleged incident of going to the office of the opposite party and threatening him is dated 22.01.2017.**

21. Annexure P4 is a copy of a letter/invitation dated 16.12.2016, inviting the petitioner to attend a program on 22.01.2017(alleged date of incident).

22. **The reason for the alleged threat is not very clear. It is only stated that the petitioner threatened, as the opposite party's demand for money was not rightful.**

23. **Section 504 of the Indian Penal Code, lays down:-**

*"**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.*

***Ingredients of offence.**— The essential ingredients of the offence under Sec. 504 are as follows:-*

(1) The accused intentionally insulted someone;
(2) He thereby intended to give him provocation;
(3) He knew that it was likely that such provocation would cause that person to commit a breach of the peace or to commit any other offence."

24. **Section 506 of the Indian Penal Code, lays down:-**

*"**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;*

***Ingredients of offence.**— The essential ingredients of the offence under Sec. 506 are as follows:*

(1) The accused threatened someone with injury to his person, reputation or property, or to the person, reputation or property of another in whom the former was interested;
(2) The accused did so with intent to cause alarm to the victim of offence;
(3) The accused did so to cause the victim to perform any act which he was not legally bound to do."

25. The following paragraphs in ***Vikram Johar (Supra)*** are also very relevant in this case:-

> *"**13.** Before we proceed to further examine the facts of the present case, we may notice the ambit and scope of power of the Court at the time of considering the discharge application.*
>
> ***14.** This Court in Union of India Vs. Prafulla Kumar Samal & Another, (1979) 3 SCC 4 had occasion to consider Section 227 Cr.P.C., which is Special Judge's power to pass order of discharge. After noticing Section 227 in paragraph No.7, this Court held following:-*
>
> *"7. * * **
>
> *The words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."*
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> ***15.** After considering the earlier cases of this Court, in paragraph No.10, following principles were noticed:-*
>
> *"**10.** Thus, on a consideration of the authorities mentioned above, the following principles emerge:*

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however 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 within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court 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, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

16. *A Three-Judge Bench of this Court in State of Orissa Vs. Debendra Nath Padhi, (2005) 1 SCC 568, had occasion to consider discharge under Section 227, it was held by the court that Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the* *evidential materials gathered after investigation fall short of minimum legal requirements.*

17. *Another judgment of this Court, which is to be referred is Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others, (2015) 6 SCC 287. This Court in the above case has noticed the potentiality of misuse of Section 156(3) to harass those, who are entrusted with various statutory functions. This Court, in fact, has made observations that application under Section 156(3) Cr.P.C. has to be supported by an affidavit so that person making allegation should take responsibility of what they have said in the complaint. In paragraph No.30, following has been held:-*

"30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons.That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores."

18. *It is, thus, clear that while considering the discharge application, the Court is to exercise its judicial mind to determine whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not to hold the mini trial by marshalling the evidence.*

> ***19.*** *After noticing the nature of jurisdiction to be exercised by the Court at the time of discharge, we now revert back to the facts of the present case, where taking an allegation of complaint as correct on the face of it, whether offences under Sections 504 and 506 is made out, is a question to be answered."*

26. **In the present case** the complainant could not prima facie prove that the petitioner intentionally insulted the opposite party to cause provocation with the knowledge that the opposite party would then commit some offence.

27. Nor is there any allegation of the opposite party or materials on record to prima facie show that the petitioner threatened with injury to his person, reputation or property or caused alarm to him to make him do something which he was not legally bound to do. Thus there is no materials on record to justify the present case to proceed towards trial.

28. Accordingly, the criminal revisional application being **CRR 3776 of 2019 stands allowed.**

29. The proceedings in case no. 44C of 2017, under Section 504/506 of the Indian Penal Code, pending before the Learned Additional Chief Judicial Magistrate, Kalyani, Nadia and also the order dated 22.11.2017 thereby issuing process against the petitioner, is hereby quashed.

30. No order as to costs.

31. All connected Applications stand disposed of.

32. Interim order if any stands vacated.

33. Let a copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

34. Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)