

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1786 of 2020

Dina Nath @ Dinanath Prasad

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. S. K. Dasgupta.

For the State : Mr. S. Ghosh,
Mr. Bitasok Banerjee.

For the Opposite Party No. 2 : Mr. K. Sarkar,
Mr. F. Bandopadhyay,
Ms. Riya Ballav.

Heard on : 06.12.2022

Judgment on : 03.01.2023

Shampa Dutt (Paul), J.:

The revision has been preferred praying for quashing of proceedings in connection with the G. R. case No.1463 of 2019, arising out of Jorasanko Police Station Case No. 324 of 2019, dated 14.12.2009, thereby alleging the commission of offence under section 506 of the Indian Penal Code, pending before the Learned Additional Chief Metropolitan Magistrate, Calcutta.

The petitioner's case is that he is currently working for gain as the Senior Superintendent of Post Offices (STS), North Kolkata Division, Kolkata – 700 037. The Petitioner cleared his PSS Group B Examination back in the year of 2004 and since then, he has relentlessly dedicated himself to his job and as such his hard work has been appreciated and acknowledged by his Division, through several awards and rewards over the years.

The opposite party no. 2 herein is the de facto complainant as well as the husband of the purported victim of the instant case. The Victim herein, namely Dipa Ganguly is the former Assistant Post master (Deputy Postmaster 'A' Officiating) of Barabazar Head Office, North Kolkata Division, Kolkata – 700 007.

The instant case started on 29.11.2019, when the Postmaster General, Kolkata Region, visited the Barabazar Head Post Office,

Kolkata – 700 007, under North Kolkata Division, for the purpose of checking the Mail Delivery Performance and accordingly, a visit report was issued therein. Vide the said visit report, it was observed by the Postmaster General that the number of actual devices used in PMA and the articles handled through PMA was properly reflecting in the day wise report of PMA Dashboard and as such the Senior Postmaster, Barabazar was directed to personally look into the matter and take necessary steps to resolve the issue.

The purported victim herein was in charge of the Delivery Section of Barabazar Head Office and was very reluctant to submit the already delayed report regarding delivery performance which was due before the Regional Office. On 13.12.2019, since the Senior Postmaster was absent for offering 'Namaz', the petitioner herein had to call the purported victim few times, over phone, requesting her to submit the report concerned. Despite his repeated telephonic requests, the petitioner did not submit the report but only encountered negative attitude from the victim. Thereafter in the evening at around 4:00pm, the victim allegedly fell ill in the office wherefrom she was hospitalized.

On the very same date, i.e. on 13.12.2109, the opposite party no. 2 herein, being the husband of the victim, lodged a complaint against the petitioner, alleging therein that the petitioner has been inflicting mental torture upon the victim for some time and on 13.12.2019, such

torture reached its peak when the petitioner threatened the victim over phone to suspend her, by using filthy language and such type of telephonic conversation continued at every ten minutes interval. Being a neuro patient, the victim fell seriously ill and was then admitted to the Marwari Relief Hospital and her condition was critical.

The petitioner states that the facts of the incident have been twisted in order to falsely implicate the petitioner in a baseless and frivolous criminal case with absolute mala fide intention just to harm the reputation of the petitioner, who has been diligently performing his job. The petitioner submits that the administrative communication between the petitioner and the purported victim was completely professional and she being a neuro patient, as stated in the letter of complaint, fell ill due to her own health condition on the date of occurrence and the petitioner had no role therein.

On being empowered by the order dated 14.12.2019, of the learned Magistrate a First Information Report, being Jorasanka Police Station, Case No. 324 of 2019, dated 14.12.2019, was initiated by the police authority on the strength of the complaint dated 13.12.2019, lodged by the opposite party no. 2 herein, against the petitioner, thereby alleging the commission of an offence punishable under section 506 of the Indian Penal Code.

After completion of a purported investigation, the investigating agency herein submitted its report in its final form being Charge Sheet No. 184 of 2020, dated 11.09.2020, for offence punishable under Section 506 of the Indian Penal Code, 1860.

Upon receipt of the Charge Sheet No. 184 of 2020, dated 11.09.2020, vide an order dated 15.06.2020, the Learned Additional Chief Metropolitan Magistrate, Calcutta (In-charge) took cognizance of the offence in connection with the instant case and subsequently, vide an order dated 07.10.2020, the instant case was transferred to the Learned Metropolitan Magistrate, 15th Court for trial and disposal.

The total allegation is false as the victim never earlier preferred any complaint before any authority regarding the alleged intimidation.

There being no evidence to prima facie make out a cognizable offence against the petitioner, the proceedings are liable to be quashed.

Mr. S. K. Dasgupta, Learned Counsel for the petitioner has submitted that the impugned proceeding is a glaring example of the abuse of the process of court, which if allowed to remain operative will be against the principle of natural justice and as such the same is liable to be set aside for the ends of justice.

It is expedient in the interest of justice to uphold the dignity of law and quash the impugned proceeding.

The administrative communication between the petitioner and the purported victim was completely professional and she being a neuro patient, as stated in the letter of complaint, fell ill due to her own health condition on the date of occurrence and the petitioner had no role therein.

The letter of complaint lodged by the opposite party herein gives no specific time or date of the purported several mental tortures inflicted upon the victim, prior to the instant case. Furthermore no representation or complaint of the alleged torture was ever made to any authority/authorities other than on the date of occurrence when she failed to do her official duty. Such essential element missing from the allegations leveled against the petitioner alone questions the veracity of the contents of the letter of complaint.

That according to the Charge Sheet submitted in the **departmental inquiry**, it was observed that the victim herein failed to maintain devotion to her duty as required under the Rule 3(1)(ii) of the Central Civil Service (Conduct) Rules, 1964 and also failed to perform and discharge her duties with the highest degree of professionalism and dedication to the best of her abilities as required.

It was further observed in the said charge sheet that the whole allegation against the petitioner in the instant case is not based on facts because when she was examined by the Departmental Authority on

21.07.2020, **she categorically stated that the petitioner did not use any harsh language, during the time of occurrence**, and such statements stands completely contradictory with the allegation leveled in the letter of complaint as submitted by the opposite party no. 2.

It is open to the Magistrate either to grant permission or refuse to grant permission for registering an FIR. When there is such discretion vested in the Magistrate, it is desirable that the Magistrate should give reasons for empowering a police officer to **investigate a non-cognizable case**, so that an aggrieved party will be in a position to question the same in the Higher Courts and will be in a position to know, for what reasons his application was considered or not considered.

The opposite party ought not to be allowed to abuse the process of law and the criminal justice system by being allowed to subject the petitioner to trial based on such frivolous grounds.

The present petitioner, if sent up for trial in connection with the instant case, would have to suffer irreparable loss and injury and the same shall be an abuse of the process of the Court and it would grossly fail to serve the ends of justice.

As such the proceeding is liable to be quashed for ends of justice.

The **Learned Counsel for the opposite party no. 2 and State** have both unanimously submitted that there being sufficient evidence in the case diary to prima facie make out a clear case against the petitioner/accused, the Charge Sheet is in accordance with law and the revision is thus liable to be dismissed.

Section 506 IPC 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.”*

The term Criminal intimidation has been defined under Section 503 of the IPC.

Section 503 IPC lays down:

“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."

**In Vikram Johar Vs The State of Uttar Pradesh & Anr.,
Criminal Appeal no. 759 of 2019, arising out of SLP (Crl.) no.
4820/2017.**

"14. 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.

15. 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. XXXXXXXXXXXX

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.”

16. *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.”

17. 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.

18. 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.”

19. *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.*

20. *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.

21. We need to notice Sections 503, 504 and 506 for appreciating the issues, which has come up for consideration, which are to the following effect:-

“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.

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.

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.”

22. Section 504 of I.P.C. came up for consideration before this Court in *Fiona Shrikhande Vs. State of Maharashtra & Another*, (2013) 14 SCC 44. In the said case, this Court had occasion to examine ingredients of Section 504, 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 paragraph No.11, following principles have been laid down:-

“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, (1976) 3 SCC 736, 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 advert to any defence that the accused may have.”

23. *In paragraph No.13 of the judgment, this Court has noticed the ingredients of Section 504, which are to the following effect:-*

“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.”

24. *In another judgment, i.e., Manik Taneja and Another Vs. State of Karnataka and Another, (2015) 7 SCC 423, 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 I.P.C. After noticing Section 503, which defines criminal intimidation, this Court laid down following in paragraph Nos. 11 and 12:-*

“11. *XXXXXXXXXXXXXX*

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.”

25. *In the above case, allegation was that 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.*

26. *Now, we revert back to the allegations in the complaint against the appellant. The allegation is that 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 appellant came and abused the complainant does not satisfy the ingredients as laid down in paragraph No.13 of*

the judgment of this Court in Fiona Shrikhande (supra).

27. *Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande (supra) 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 ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edition with regard to proof of offence states 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 some one 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.”

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

From the materials on record it is evident that petitioner is in a superior position in his official capacity being the Senior Superintendent of Post Offices (STS) Kolkata division. The victim

(alleged) held the post of Assistant Post Master (Deputy Post Master 'A' officiating) at the relevant time.

From the Complaint it is found that admittedly the alleged victim is a neuro patient.

The petitioner's case is that the victim was asked to submit a report as called for by the Postmaster General, Kolkata region on his visit on urgent basis.

As the petitioner kept calling over phone, reminding her for the report, the victim fell ill. It has been alleged that the petitioner, her superior authority abused her in filthy language and also threatened to suspend her, she fell ill critically.

From the order of the Learned Magistrate dt.14.12.2019 it is clear that the petitioner called the victim from the **head office phone** and asked her about the pending work allegedly in a very rough way & very angry and threatened her with dire consequence. So she fell ill.

Documents in the record show that the alleged victim Dipa Ganguly had to face disciplinary proceedings vide memo dated 16.10.2020 for the following charge (in brief)

Article I - The Deputy Postmaster, Barabazar Head Post Office who was Supervisor of Delivery Branch and responsible for formulating the proposal and implementation of the said order simply sat over the

issue without taking any concerted action till 13.12.2019 and failed to adhere to the instruction issued by her superior authority.

It is, therefore alleged that said **Smt. Dipa Ganguly failed to maintain devotion to duty** as required under Rule 3(1) (ii) of CCS (Conduct) Rules, 1964 and also failed to perform and discharge her duties with the highest degree of professionalism and dedication to the best of her abilities as required under Rule 3 (1) (xxi) of CCS (Conduct) Rules, 1964.

Article – II – That the said Smt. Dipa Ganguly while functioning as Deputy Postmaster Barabazar Head Post Office from 04.01.2019, the senior Superintendent of Post Offices, North Kolkata Division contacted her over phone repeatedly on 13.12.2019 to get the compliance on the instruction of Postmaster General, Kolkata Region issued through his Visit Report dated 29.11.2019 that Beat Redesign is to be done for creation of 55 beats by SSPOs, North Kolkata Division by 25.12.2019 for implementation of combined beat system at Barabazar HPO being of urgent concern, the matter was being pursued vigorously for O/o The Postmaster General, Kolkata Region as well as the Sr. Superintendent of Post Offices, North Kolkata Division for implementation in time. Since there was no positive response from said Smt. Dipa Ganguly, Shri D. N. Prasad, Senior Superintendent of Post Offices, North Kolkata Division as the administrative authority desired immediate compliance from

Smt. Ganguly on 13.12.2019 as she was the Supervisor of Delivery Branch of Barabazar Head Post Office. Meanwhile, Sri Ranjan Gangopadhyay, husband of said Smt. Dipa Ganguly lodged a written complaint at Jorasanka Police Station against Sri Dina Nath Prasad, Senior Superintendent of Post Offices, North Kolkata Division on 13.12.2019, alleging “ugly, filthy and unbecoming behavior” of the latter towards his wife on 13.12.2019, and also alleged mental torture to his wife Smt. Dipa Ganguly.

Article – III – Smt. Dipa Ganguly, in the capacity of Deputy Postmaster, Barabazar Head Post Office, was the overall in-charge of supervision of Delivery Branch of Barabazar Head Post Office. But she did not carry out any check and there was serious lapse on the part of Smt. Ganguly for which both the Postmen got scope to keep the ordinary letters undelivered. Smt. Dipa Ganguly admitted her fault in her written statement dated 04.12.2019.

It is therefore alleged that **Smt. Dipa Ganguly, Deputy Postmaster, Barabazar Head Post office failed to take all possible steps to ensure integrity and devotion to duty of all Government servants for the time being under her control and authority as required under Rule 3(2)(i) of CCS (Conduct) Rules 1964.**

Thus it is evident that the alleged victim was found to be lacking in her performance in her job (may be due to her ill health) and could

not cope with the job pressure and also opted for URS. The materials on record/case diary clearly support the said facts.

The relationship between the petitioner and the victim is that they are colleagues but the petitioner is the person holding the senior post.

If in such circumstances where it is clear from the documents produced that the alleged victim was lacking in her job (disciplinary proceedings) for which she was being reminded constantly by an official in a superior position and who now has to face criminal charges, for such diligence, **then no person will be able to exercise his authority to get work done properly and in time.**

Fear of being implicated in a criminal case will make a diligent officer in a supervisory capacity hesitate to carry out his duties efficiently.

Such conduct should not be encouraged.

The medical papers in the case diary have also been gone through by this court.

The prosecution in this case is clearly lacking in the requirement of ingredients to constitute an offence under Section 506 IPC.

- (i) *The petitioner calling over office phone to get official work done by a branch head who is clearly negligent in her work is “not threatening”.*
- (ii) *As such there was no threat of any injury to her person (victim), reputation or property or in whom she was interested.*
- (iii) *There was **clearly no intention to cause alarm** to the alleged victim.*

This was a case where the petitioner called the victim asking her to do the work which **she was officially bound to do efficiently.**

Accordingly it is clear that there is no ingredients to constitute the offence alleged under Section 506 IPC.

The Supreme Court in **M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021), in Criminal Appeal No. 330 of 2021**, citing several precedents held :-

“ * * * * * *

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

vi) Criminal proceedings ought not to be scuttled at the initial stage;

ix) The functions of the judiciary and the police are complementary, not overlapping;

xiii) The power under **Section 482** Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

* * * * *

In Ranveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special

Leave petition (CRL.) No. 2953 of 2022, the Supreme Court held :-

“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.”**

In ***Umesh Kumar Vs State of Andhra Pradesh and Anr. (Supra)***

the Supreme Court **also** held :-

“20. *The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised ex debito justitiae. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial. (Vide Pepsi Foods Ltd. v. Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] , Ashok Chaturvedi v. Shitul H. Chanchani [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704 : AIR 1998 SC 2796] , G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and Padal Venkata Rama*

Reddy v. Kovvuri Satyanarayana Reddy [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603] .)

21. In *Rajiv Thapar v. Madan Lal Kapoor [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158]* this Court while dealing with the issue held as follows : (SCC p. 348, para 30)

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

30.1. Step one : Whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two : Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three : Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four : Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?”

22. In State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] this Court dealt with an issue of whether an application under Section 482 CrPC for quashing the charge-sheet should be entertained before cognizance is taken by a criminal court and held as under : (SCC pp. 269-70, para 68)

“68. ... Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to ‘killing a stillborn child’. Till the criminal court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial.... It is not to suggest that under no circumstances a writ petition should be entertained. ... The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court. It is not the case that no offence has been made out in the charge-sheets and the first information report.”

(emphasis supplied)

23. The issue of mala fides loses its significance if there is a substance in the allegation made in the complaint moved with malice. In *Sheonandan Paswan v. State of Bihar* [(1987) 1 SCC 288 : 1987 SCC (Cri) 82 : AIR 1987 SC 877] this Court held as under : (SCC p. 318, para 16)

“16. ... It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala

fides or political vendetta of the first informant or the complainant.”

24. In Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 : AIR 2007 SC 1274] this Court held as under : (SCC p. 43, para 74)

“74. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained.”

25. In State of A.P. v. Golconda Linga Swamy [(2004) 6 SCC 522 : 2004 SCC (Cri) 1805 : AIR 2004 SC 3967] this Court held as under : (SCC p. 529, para 8)

“8. ... It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”

(See also *K. Karunakaran v. State of Kerala [(2007) 1 SCC 59 : (2007) 1 SCC (Cri) 251]* .)

26. Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal.

27. *The scheme for inquiry/trial provided under CrPC is quite clear. After investigation, report under Section 173(2) CrPC is to be submitted before the competent court i.e. the Magistrate having jurisdiction in the matter and the Magistrate may take cognizance under Section 190 CrPC. However, it is still open to the Magistrate to direct further investigation under the provisions of Section 173(8) CrPC. If the case is triable by the Court of Session, the Magistrate would commit the case to the said court under Section 209 CrPC. It is for the court to examine whether there is sufficient material collected during investigation and filed along with the charge-sheet that a prima facie view can be taken to proceed against the accused and in view thereof, frame charges under Section 228 CrPC. At this stage the remedy available to the accused is to ask for discharge under Section 227 CrPC. In case charges are framed the accused has to face the trial, charges can be added/alterd at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216 CrPC. The only legal requirement is that a witness has to be recalled as provided under Section 217 CrPC when a charge is altered or added by the court.”*

In the instant case, charge-sheet has been filed and cognizance has been taken by the Magistrate concerned.

The Supreme Court in State of Maharashtra vs. Salman Salim

Khan (2004) 1 SCC-525, also held:-

“12.....In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The

truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial.....”

At present the only material before this Court is the charge sheet included in the case diary. The materials in the case diary and the charge sheet there in do not make out a prima facie case under Section 506 of the Indian Penal Code against the accused/petitioner and there is no materials for proceeding against the accused/petitioner towards trial and this is a fit case where the inherent power of the court should be exercised.

The Charge Sheet and the evidence placed in support thereof, form the base to take or refuse to take cognizance by the competent court.

The ultimate test therefore, is whether the allegations have any substance (***Prakash Singh Badal Vs State of Punjab, AIR 2007 SC 1274***).

In the Present case there is no substance in the allegations and no material exists to prima facie make out the complicity of the applicant in an offence under Section 506 IPC and as such the proceedings in this case should be quashed.

Accordingly, the criminal revisional application being **CRR 1786 of 2020 stands allowed.**

The proceedings in G.R. Case No. 1463 of 2019, arising out of Jorasanko Police Station Case No. 324 of 2019, dated 14.12.2019, under Section 506 of the Indian Penal Code, pending before the learned Additional Chief Metropolitan Magistrate, Calcutta, is hereby quashed.

No order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

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

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

(Shampa Dutt (Paul), J.)

