

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 13 OF 2023**

Jaimeen Chodankar & anr.	... Petitioners
<i>Versus</i>	
State Thr. Officer in Charge & anr.	... Respondents

Mr. Prasheen Lotlikar, Advocate *with Mr. Bhavesh Lotlikar, Advocate for the Petitioners.*

Mr. Pravin Faldessai, Additional Public Prosecutor *for the Respondents-State.*

CORAM: M. S. KARNIK, J
DATED: 20th MARCH 2023

ORAL ORDER

1. Heard learned Counsel for the Applicant and learned Additional Public Prosecutor appearing on behalf of the Respondent.

2. The challenge in this Petition is to an Order dated 09.12.2022 passed by the Additional Sessions Judge, Panaji, Goa, partly allowing the Revision Application. In revision before the learned Judge, the Applicants who are the original Accused had challenged an Order dated 17.09.2022, whereby the learned Trial Court ordered that charges are to be framed against the Applicants (original Accused Nos. 1 and 2) for the offence punishable under Sections 323, 504, 506(ii) and 509 read with Section 34 of the Indian Penal Code (IPC).

3. The case of the prosecution in brief is that on 05.11.2021, Ms. Sonali Volvoikar lodged an FIR alleging that Accused Nos. 1, 2 and 3 abused her and her family thereby voluntarily causing hurt to her and her mother Ms. Kalindi Ashok Chodankar. The accused criminally intimidated her and her family that they will cut her and her family members into pieces with Koita. An FIR came to be registered in Porvorim Police Station under Sections 323, 504 and 506(ii) read with Section 34 of the IPC. The revisional Court partly allowed the revision. The Revisional Court set aside the charge framed by the Trial Court under Section 509 of IPC. The Trial Court's Order directing framing of the charges against the Applicants under Section 323, 504 and 506(ii) of the IPC was maintained.

4. So far as the Accused No.3 is concerned, she was discharged by the Trial Court. The Applicants are Accused Nos. 1 and 2.

5. Learned Counsel for the Applicant in all fairness restricted his challenge to the Order passed by the revisional Court so far as it did not interfere with the framing of charge by the learned Trial Court under Section 504 of the IPC. The learned Counsel submitted that the revisional Court was in error in maintaining the Order passed by the Trial Court framing a charge under Section 504 of IPC. He submits that none of the ingredients of Section 504 of IPC to make out an offence against the Applicants are satisfied in the present case.

Reliance is placed on the decision of the Supreme Court in the case of **Vikram Johar vs. State of Uttar Pradesh & anr.**¹ in support of his submissions.

6. Learned Additional Public Prosecutor, on the other hand, invited my attention to the findings recorded by the Trial Court as well as the revisional Court. Learned Additional Public Prosecutor submitted that having regard to the allegations, this is not the stage at which this Court would be in a position to examine whether the insult and provocation was intentional as this is a matter to be examined after leading evidence. It is submitted by learned Additional Public Prosecutor that the Accused had used abusive language against the Complainant and had also threatened her with a Koita, which accusations are sufficient to bring the act within the ambit of Section 504 of IPC. It is submitted by learned Additional Public Prosecutor that whether the provocation and the intentional insult is of such a nature that the same is within the mischief of Section 504 of IPC, is a subject matter of trial. He urged that there is no illegality or perversity in the Order of the Revisional Court.

7. Heard.

¹ (2019) 14 SCC 207

8. As indicated earlier, the present Petition is pressed by the learned Counsel only as regards the revisional Court not interfering with the Trial Court's Order framing the charge under Section 504 of IPC. To appreciate the controversy, it would be material to rely upon relevant portion of the statement of the Complainant witness Mrs. Sonali, wife of Rajesh Volvoikar, which reads thus :

“I say that on 05/11/2021 at 18:44 hrs the two sons of Mrs. Medha Chodankar namely Mr. Jatin Chodankar and Mr. Jaimeen Chodankar started abusing me and my family members in filthy words and language over the issue of coconut falling on roof. I further say that at around 22:00 hrs. Mrs. Medha Chodankar, Mr. Jatin Chodankar and Mr. Jaimeen Chodankar came and pushed me hard, however I was held by my husband. Further Mr. Jaimeen Chodankar held and twisted the hand of my mother Mrs. Kalindi Chodankar very hard. Both of them again pushed me hard on the ground. I say that wife of Jatin, Mrs. Swarnima was encouraging her husband to assault me. Further Mr. Jaimeen Chodankar came and armed with a "coyta" and threatened saying us that he will cut me and my family members into pieces. Further both of them also abused my children in filthy words who were present in the house. Mr. Jatin and Jaimeen also said bad word to me like, "chedi" which insulted my modesty.

All this time the daughter of Medha Chodankar i.e Mrs. Monali Fadte and her husband Mr. Sandeep Fadte were also present. Mr. Sandeep Fadte was shouting and giving us bad words such as Chedyecho, Fodrecho etc.

I say that there is danger to our life from the family of Medha Chodankar.

I hence lodge my complaint against Mr. Jatin Chodankar, Mr. Jaimeen Chodankar, and Mrs. Medha Chodankar for

abusing me with filthy words and language, assaulting me and my mother by pushing me and twisting her hand and further threatening me and my family members with dire consequences to kill.”

9. It would also be material to re-produce the relevant portion of the statement of the mother of the Complainant Mrs. Kalindi, which reads thus :

“I say that on 05.11.2021 at about 10.00 p.m. I was in my room and I heard some loud arguments of my daughter Mrs. Sonali and other family members in the kitchen and saw that Mrs. Medha, her sons namely Jatin and Jaimeen were shouting on my daughter and my so in law and abusing them in filthy language. I also intervene to separate them and at that time Jaimeen and Jatin pushed my daughter and son in law. Jaimeen further twisted my hand badly and pushed me on ground. I saw that Mrs. Swarnima wife of Jatin who was present in the kitchen was also encouraging her husband to assault us. I say that in the meantime suddenly took koyta in is hand and threatened my daughter saying he will cut her and her family members into pieces. I say that Jaimeen and Jatin also abused my daughter by saying her 'Chedi' several times during the fight.”

10. As to whether from the statements above mentioned and the materials on record, the essential elements constituting offence under Section 504 are satisfied, can best be dealt with by seeking guidance from the decision of the Hon'ble Supreme Court in the case of **Vikram Johar vs. State of U.P.** (supra). Paragraphs 21 and 22 of

the decision in **Vikram Johar vs. State of U.P.** (supra), which are relevant for deciding the controversy need to be re-produced, which reads thus :

“21. Section 504 IPC came up for consideration before this Court in *Fiona Shrikhande v. State of Maharashtra* [*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 advert 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.”

(Emphasis mine)

11. The question is whether the intentional insult in the present case is of such a degree that would provoke a Complainant/witness to break the public peace or to commit any other offence. From the reading of the statements and upon considering the materials as they stand, even if they are taken at its face value, it would be seen that

the Applicants-accused had abused the Complainant and threatened her.

12. In my opinion, the materials on record as they stand, are not sufficient to regard that the act or conduct of the Accused amounting to an intentional insult, was with the intent to provide provocation that would cause the Complainant or the other witnesses to break the public peace or to commit any other offence. Though there are accusations that the Applicants had threatened and abused the Complainant and the witnesses for which they can be proceeded with by the Trial Court, however, these accusations do not satisfy the ingredients necessary to constitute an offence under Section 504 of IPC. To this extent, the Order passed by the Revisional Court is interfered with. The Petition, therefore, deserves to be partly allowed.

13. Hence, the Petition is partly allowed. The Order of the Trial Court to the extent the charge is framed under Section 504 of IPC is quashed and set aside. The charges framed by the Trial Court so far as Section 323 and 506(ii) against the Applicants are maintained.

14. Criminal Writ Petition is disposed of.

M. S. KARNIK, J