



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL APPLICATION (APL) NO. 222/2023

Mr.Lalit Shankarrao Kamde

..APPLICANT

v e r s u s

1) Narendra Wamanrao Barai and another

..RESPONDENTS

.....
Mr.R.Vyas, Advocate for the applicant

Mr. U.P. Dable, Advocate for respondent No.1

Mrs.M.H.Deshmukh, APP for respondent No.2-State
.....

CORAM: ANIL L. PANSARE, J.

DATED: 4th September, 2023

PC :

The non-applicant no.1/original complainant is the father-in-law of the applicant/original accused. They will be hereinafter referred to by their original nomenclature.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 seeking to quash and set aside Summary Criminal Case No.6065/2021 so also the order dated 26th September, 2022 passed by the learned Judicial Magistrate, First Class, Railway Court, Nagpur. By the impugned order, the learned Magistrate has issued process against the applicant for the offences punishable under Sections 341, 323, 294, 504 and 506 of the Indian Penal Code, 1860.

3. According to the complainant on 9th March 2018, the complainant had been to Railway Station, Nagpur to drop his daughter,

grandson and wife for their journey to Hyderabad. After the departure of train from Platform No.1, the complainant moved to exit. At that point of time, the accused along with his brother namely, Jayant, reached Platform No.1 and grabbed the collar of the complainant, restrained him from moving ahead and abused him in a filthy and derogatory language. The accused has also dragged the complainant by his neck. The complainant started shouting, upon which, the public present at Platform no.1 gathered. Meanwhile, the brother of the accused-Jayant separated both of them. The incident is said to have been captured in the CCTV installed at Railway authorities. However, during the course of enquiry, it was revealed that the said CCTV footage is not available. The learned Magistrate proceeded to record the statement in terms of Section 200 of the Code.

4. Mr.R. Vyas, the learned counsel for the applicant has invited my attention to the statement of the complainant. He narrated the incident as stated in the complaint. However, the difference is in the words used while describing the abusive language used against the complainant. The applicant intends to take advantage of the differences in the use of words to contend that no case is made out.

5. I do not find any merit in such a stand in as much as the core story of abuse and assault in public place remains intact.

6. Mr. Vyas, the learned counsel for the applicant has then invited my attention to the report filed by the police. The report indicates that the police enquired with the brother of the complainant. He has stated that though there occurred verbal spat, the incident of

grabbing of collar has not occurred.

7. The question, however, is whether the complaint could be quashed on the count of certain discrepancies noted in the enquiry made by the police. The answer would be certainly in the negative.

8. As regards quashing of the proceedings, it is well-settled by now, and as laid down in the case of Niharika Infrastructures Pvt.Ltd. Vs. State of Maharashtra: (2021 SCC Online SC 315), while examining the complaint/ FIR, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint/FIR. The Hon'ble Supreme Court has held that the criminal proceedings ought not to be scuttled at the initial stage and quashing of complaint/FIR should be an exception and a rarity than an ordinary rule. Nonetheless, if upon perusal of complaint and upon considering it to be reliable or genuine or in a way by accepting the allegations to be true, if no case is made out, the complaint/FIR may be quashed.

9. The learned counsel for the applicant contends that complaint would include 'documents annexed with the complaint, including police verification'. Thus, emphasis is on the police report.

10. If this argument is to be accepted then averments made in the complaint will have to be ignored, which is not permissible. As held by the Hon'ble Supreme Court in Niharikas's case (supra), while examining the complaint the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in

the complaint. The real test will be whether non-interference would result in miscarriage of justice. The brother of the complainant though has deviated the version of the complainant on the point of grabbing of the collar, he has stated that he was present at the spot when the incident occurred. This deviation, however, finds place in the enquiry made by the police. The statement of brother is not recorded. In the circumstances, the truth will unravel only when the brother enters the witness box. His narration recorded in the report cannot be and ought not be kept at the higher pedestal than what the complainant has alleged in his complaint. Had his statement been separately recorded, it would have carried a different weightage. In the circumstances, whether the allegations made in the complaint, if accepted to be true, indicates existence of *prima facie* case against the applicant, will have to be seen.

11. Mr. Vyas, the learned counsel for the applicant has taken taken aid of the judgment of the Hon'ble Supreme Court, in the case of Mohammad Wajid & another vs. State of U.P. and others, in Criminal Appeal No. 2340/2023. The Hon'ble Supreme Court, while dealing with the offences punishable under Sections 504 and 506 of the IPC, has culled out the essential ingredients to attract Sections 503 which reads thus:-

“24. 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.”

The Apex Court has, then, observed that Section 504 of the IPC, contemplates the intentional insulting of a person and thereby provoking such person to breach the peace or intentional insulting of a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of public peace or to commit any other offence. It is further held that mere abuse may not come within the purview of the Section.

12. Mr. Vyas, contends that the complaint if taken on its face value does not spell out ingredients of Section 504 of IPC as the abuse or assault allegedly committed by the applicant was neither for provoking the complainant to breach public peace or to provoke him to commit offence.

13. This contention has been countered by Mr. Dable, the learned counsel for the complainant. He states that the insult and assault is such as would provoke the complainant to breach the public peace. The complainant has been assaulted and abused by his own son-in-law. The insult of father-in-law in the public is bound to provoke him not only to breach public peace but also to commit an offence, but is a different matter that because of his age, he might not have committed the same.

14. Mr. Dable, has relied upon the judgment of Karnataka High Court, in the case of Nemichand and others vs. State of Karnataka: 1980 Cri.L.J. 751. The High Court has held that at the time of issuance of process, the Court is only bound to ascertain whether on the allegations in the complaint and the sworn statements of the complainant and his witnesses, if any, there is *prima facie* case to proceed against the accused or not and not to go into the details and come to the conclusion whether those allegations are sufficient to convict the accused or not.

15. The judgment in Nemichand's case (supra) carries persuasive value and I do agree with the aforesaid principles which are well settled. The complainant has filed the complaint stating therein that he has been abused and humiliated in the public place i.e. Railway Station by his son-in-law, the applicant herein. As regards his intention to provoke the complainant, the same is a matter of trial. At this stage, it will not be appropriate to comment upon the intention behind the assault and abuse. In other words, the complaint cannot be quashed on this count.

16. In the result, the Application being devoid of merit, stands rejected.

(ANIL L. PANSARE, J.)