

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38279 of 2023

Arising Out of PS. Case No.-687 Year-2020 Thana- DANAPUR District- Patna

Nagendra Prasad Keshri Son Of Late Yamuna Prasad Keshri@ Jamuna Prasad Keshri R/O Flat No. 104, Pushpanjali Plaza, Basant Vihar Colony, Boring Road, Ps- Buddha Colony, Distt- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Vikash Kumar Son Of Late Vijay Shankar Prasad R/O Sadar Bazar, L.D. Market Danapur Cantt. Ps - Danapur Distt- Patna Presently Residing At Durga Mapple Apartment , Ps- Danapur, Distt- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mrs. Archana Sinha, Advocate
For the Opposite Party/s : Mr. Sanjay Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 17-12-2024

1. This is an application under Section 482 of the Code of Criminal Procedure, filed by the accused / petitioner for quashing the order of cognizance, dated 23rd of July, 2021, in Danapur P. S. Case No. 687 of 2020, arising out of Complaint Case No. 902 of 2020, under Section 504/506/34 of the Indian Penal Code.

2. For proper adjudication of the case as well as better understanding of the factual matrix, the following list of dates, in my view, is necessary to be incorporated at the outset: -

(i) 14.10.2020-16.10.2020 – The complainant / Opposite Party No. 2 filed a case against the petitioner for



drinking, keeping and selling wine in a multi-storied apartment under the name and style of Durga Mapple Apartment.

(ii) 16.10.2020 – The accused / petitioner grilled the complainant and threatened him to kill.

(iii) 17.10.2020 – The accused directed the Sweeper of the said apartment to not remove the dustbins in front of the flat of the complainant.

(iv) 19.10.2020 – Generator line of the complainant was disconnected.

(v) 27.10.2020 – The petitioner threatened the complainant to withdraw the cases.

(vi) 25.11.2020 – The petitioner filed Complaint Case No. 902 of 2020 before the learned Additional Chief Judicial Magistrate, Danapur.

(vii) 08.12.2020 – The aforesaid complainant having been sent to the Danapur Police Station under Section 156(3) of the Cr.P.C., Danapur P. S. Case No. 687 of 2020 was registered against the petitioner.

(viii) 23.07.2021 – The Additional Chief Judicial Magistrate, Danapur took cognizance of offence under Sections 504, 506 and 34 of the Indian Penal Code on police report.

3. It is the case of the Opposite Party No. 2 /



complainant that he is a *bona fide* owner of Flat Nos. 703 and 704 in Durga Mapple Apartment at Danapur and the petitioner is one of the land owners. It is alleged that on 13th of November, 2019, the land owners and other flat owners authorized the complainant, who is an Advocate by profession, for filing a case against the builder which is pending as Danapur P. S. Case No. 913 of 2019.

4. Subsequently, the complainant filed two complaints being 429 (C) of 2020 and 435 (C) of 2020 against the builders and land owners, namely, Nagendra Prasad Keshri (the petitioner herein) and Niraj Prasad Keshri.

5. It is alleged that the complainant filed a complaint at Danapur Police Station for the incident which took place on 14th of October, 2020 to 16th of October, 2020, when he found that the petitioner and others being the President and Secretary of illegally formed society of the apartments, were drinking, hoarding and selling wine inside the premises of Durga Mapple Apartment in collusion with the builder.

6. It is further alleged that the builder has collected Rs. 1,75,000/- from all 91 flats owners, amounting to Rs. 1,59,25,000/- as miscellaneous charges for common area.

7. It is further alleged that a fake society was formed



for collecting Rangdari in the name of maintenance of apartment and the petitioner described himself as the President, Niraj Keshri as Secretary and Dhiraj Kumar as Cashier of the society of the said apartment. They also manufactured forged letter heads and seal of the society of the said apartment.

8. The complainant, further alleged that on 16th of October, 2020 at about 11.05 P.M., when the police came to inquire into the incident at Durga Mapple Apartment, the petitioner and other accused persons barged in a group in drunken state and grilled the complainant and abused him. On 17th of October, 2020, the accused persons ordered the Sweeper of the said apartment to not lift the garbage of the complainant from in front of his flat and on 1st of October, 2020, the power supply by generator in the flat of the complainant was disconnected.

9. On the basis of a complaint submitted by the Opposite Party No. 2, the police registered Danapur P. S. Case No. 687 of 2020, under Sections 268, 319, 323, 341, 352, 385, 386, 387, 406, 418, 420, 426, 427, 464, 465, 468, 477(A), 500, 504, 506, 510, 34 and 120(D) of the Indian Penal Code. On completion of investigation, the police submitted charge-sheet against the petitioner under Sections 504/506/34 of the Indian



Penal Code.

10. By passing the impugned order, the learned Additional Chief Judicial Magistrate, Danapur took cognizance of offence under Sections 504, 506 and 34 of the Indian Penal Code against the accused, Sanjay Yadav @ Sanjay Kumar, Neeraj Kumar Keshri, Alok Kumar, Dhiraj Kumar and Nagendra Prasad Keshri and transferred the case to the Court of Judicial Magistrate Magistrate, 1st Class at Danapur for trial in accordance with law. The aforesaid order is under challenge in the instant Criminal Miscellaneous Case. The petitioner has also prayed for quashing the impugned order of cognizance, dated 23.07.2021.

11. Section 504 of the Indian Penal Code is a penal provision for intentional insult with intent to provoke breach of the peace. Section 504 provides a remedy for using abusive and insulting language. Abusive language which may lead to a breach of public peace is not an offence. There must be an intentional insult. Insult may be offered by words or conduct. If it is by words, the words must amount to something more than mere vulgar abuse. It is not every insult that can be classified as “intentional insult” coming within the purview of section 504 of the Indian Penal Code. If the insult is of such a nature that it



may give provocation which might rouse a man to act either to break the public peace or to commit any other offence, the offence under Section 504 is committed. The offence contemplated in Section 504 of the Indian Penal Code is intended to deal with persons who are responsible for breaches of peace of the commission of offence as those who openly abet or incite them.

12. The decision of the Hon'ble Supreme Court in *Fiona Shrikhande v. State of Maharashtra & Anr.*, reported in *AIR 2014 SC 957* may be referred to in support of the above ingredients to be established by the complainant in order to bring home the charge under Section 504 of the Indian Penal Code.

13. Offence under Section 506 of the Indian Penal Code has following essential ingredients: -

(i) Intentionally insulting a person and thereby giving provocation to him.

(ii) The person insulting must intend or know it to be likely that such provocation will cause him 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 of the Indian Penal Code.

14. In the petition of complaint, the complainant stated the date and time of occurrence as on 16th of October, 2020 at about 11.05 P.M. and the alleged offence perpetrated by the petitioner and others are stated to continue till the date of filing of the complaint, i.e., 23rd of November, 2020.

15. In paragraph 5 of the complaint, it is alleged that during the period between 14th of October, 2020 to 16th of October, 2020, up to 07.00 P.M., the petitioner and the Secretary of the cooperative society were consuming, storing and selling wine from the premises of Durga Mapple Apartment.

16. In paragraph 6, it is alleged by the complainant that the builder of the said apartment has been running his office



and has not furnished completion certificate, occupancy certificate etc.

17. In paragraph 7, it is alleged by the Opposite Party No. 2 that the builder of the said house collected Rs. 1,75,000/- from each of the 91 flat owners as charges for maintenance of the common area but they did not account for the said money and misappropriated the same.

18. In paragraph 8, it is stated that the builder and land owners convened no meeting for construction of a registered cooperative society on the basis of a resolution dated 13th of November, 2019. The accused persons illegally formed a society and used to commit coercion upon the complainant and other flat owners. As the Opposite Party No. 2 submitted a complaint in the local police station, the petitioner and other persons grilled the complainant in drunken condition and thereafter all of them abused him with filthy language, pushed him and threatened him to kill in presence of police patrolling party. Police patrolling party and one Rocky Singh saved the life of the complainant.

19. It is also alleged that on 17th of October, 2020 at about 08.00 P.M., the Supervisor and menial workers, working in the said apartment refused to remove the dustbins from the



front of the complainant.

20. On 19th of October, 2020 at about 08.00 P.M., the electric connection through generator in the flats of the complainant was disconnected.

21. It is stated by the petitioner that on 20th of October, 2020, the complainant has reported the occurrence to the police station as well as the Director General of Police, Bihar and the Senior Superintendent of Police, Patna, but police did not take any action. Hence, the complaint.

22. Ms. Archana Sinha, learned Advocate on behalf of the petitioner at the outset submits that in the petition of complaint, it is clearly stated by the petitioner that the alleged incident took place on 16th of October, 2020 at about 11.05 P.M. However, the complaint was lodged before the learned Additional Chief Judicial Magistrate, Danapur on 23rd of November, 2020, i.e., after a lapse of about one month and seven days. There is no explanation of delay in lodging the complaint. It is further submitted by her that the learned Additional Chief Judicial Magistrate mechanically forwarded the said complaint for investigation under Section 156(3) of the Cr.P.C. without considering the essential guidelines by the Hon'ble Supreme Court enunciated in *Priyanka Srivastava v.*



State of Uttar Pradesh, reported in *(2015) 6 SCC 287*. The complainant did not approach the Police Station by lodging F.I.R. prior to submission of the complaint. He did not annex any document with the petition of complaint to show that he approached the higher officials of the Police Department after his F.I.R. was refused to be accepted by the Police attached to Danapur Police Station.

23. It is further submitted by the learned counsel for the petitioner that dispute between the petitioner and the Opposite Party No. 2 started from the time of delivery of possession of flats purchased by the complainant / Opposite Party No. 2. Mostly there were allegations regarding non-delivery of service which an apartment owner is entitled to get, deficiency in construction and maintenance of common area, formation of cooperative society / association etc. Over the said allegations, the complainant lodged 8 cases against the petitioner.

24. It is also submitted by the learned Advocate on behalf of the petitioner that he does not reside in Durga Mapple Apartment. He resides elsewhere in Pushpanjali Plaza at Boring Road, Patna and he was not in Patna on the dates of alleged incident. In support of her contention, she files certain flight



tickets and boarding pass along with her application under Section 482 of the Cr.P.C.

25. The complainant / Opposite Party No. 2, being an Advocate argues his case in person. Throughout his entire argument, he demonstrates how he was harassed, humiliated and tortured by the petitioner and his men and agents.

26. In the instant criminal miscellaneous case, this Court is under obligation to see as to whether *prima facie* ingredients of offence under Sections 504 and 506 of the Indian Penal Code have been established against the petitioner or not. If *prima facie* ingredients are established, then continuation of criminal case will be a natural consequence. If I find, the ingredients of offence are not even *prima facie* satisfied, criminal case cannot continue against the petitioner.

27. The first allegation against the petitioner and other accused persons is that during the period between 14th of October, 2020 and 16th of October, 2020, they were consuming, storing and selling wine from the said apartment premises. If such allegation is accepted on its face value, the petitioner and his associates might be prosecuted under the penal provisions of the Bihar Prohibition and Excise Act. Consuming, storing and selling liquor from a house or apartment did not establish any



case of criminal insult or criminal intimidation.

28. From the submission made by the Opposite Party No. 2 himself, it transpires that, on his complaint, patrolling police party came to the said apartment after 11.05 P.M. The patrolling police party did not seize even a single bottle of wine from the premises of the said apartment. The petitioner was not arrested on the ground of drunken condition. Further case of the petitioner is that when the police came, the petitioner and his men and associates grilled him and used abusive and filthy language and threatened him to kill.

29. I have already stated hereinbelow that vulgar abuse or use of unparliamentary language is not intentional insult, if insult is of such a nature that it may give provocation which might rouse a man to act either to break the public peace or to commit any other offence, then only the offence of criminal insult is committed. There is absolutely no allegation to the effect that had the complainant be not restrained there have been a possibility of break of peace. In absence of such averments in the petition of complaint, the Court cannot take cognizance of offence under Section 504 of the Indian Penal Code.

30. Moreover, the petition of complaint is silent



regarding the allegation that the complainant was allegedly threatened by the petitioner to cause alarm or to cause him to do any act to which he is not legally bound to do or to cause the complainant to omit or to do any act, which the complainant is entitled to do as the means of avoiding the execution of such threat.

31. From the four-corners of the complaint, I do not find any such prima facie case against the petitioner.

32. On careful perusal of the complaint, it is ascertained by this Court that the dispute between the parties cropped up on the ground of inadequacy or deficiency in service required to be provided to the apartment owner. If the apartment owner is aggrieved, he has remedy to approach the appropriate forum for adequate relief. Criminal Court cannot be used to coerce a party when the criminal act has not been even prima facie established. In such a case, the continuation of criminal proceeding would be abuse of the process of Court.

33. For the reasons stated above, I have no other alternative but to hold that the learned Additional Chief Judicial Magistrate took cognizance of offence under Sections 504, 506 and 34 of the Indian Penal Code against the petitioner mechanically without considering the ingredients of offence.



34. Therefore, the order of cognizance, dated 23rd of July, 2021, taken against the petitioner is liable to be quashed and is, accordingly, quashed.

35. The instant Criminal Miscellaneous Case is allowed, on contest.

36. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	29.11.2024
Uploading Date	17.10.2024
Transmission Date	N/A

