

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41795 of 2022

Arising Out of PS. Case No.-510 Year-2015 Thana- MAHUA District- Vaishali

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1. Jageshwar Ray, S/o Late Ram Pratap Rai, Resident of Village- Gorigama, P.S.- Bhagwa, District- Vaishali.
 2. Dharmendra Kumar @ Dharmendra Ray S/o Vaidyanath Rai, Resident of Village- Bardina, P.S.- Pateypur, District- Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vinay Ranjan, Advocate Mr. Abhishek Teerthankar, Advocate Mr. Shekhar, Advocate
For the Opposite Party/s	:	Mr. Prem Kumar Jha, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 06-09-2024

Heard Mr. Vinay Ranjan, learned counsel for the petitioners and learned APP for the State.

2. The petitioners have preferred the present quashing application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC'), seeking quashing of the order taking cognizance dated 30.05.2022 passed by the learned Chief Judicial Magistrate, Vaishali at Hajipur, whereby the learned Chief Judicial Magistrate has taken cognizance for the offences under Sections 353, 504 and 506/34 of the Indian Penal Code in connection with Mahua P.S. Case no. 510 of 2015 corresponding to G.R. no. 5036 of 2015.



3. Bereft of unnecessary details, learned counsel for the petitioner submitted the relevant facts that based upon a written report, the FIR has been instituted alleging therein that on 03.10.2015, while the informant along with other police personnel reached at Milk Centre of Village-Sahpur, in the meantime, 5-6 persons in a white colour Scorpio came there when they were asked to stop the vehicle, the petitioners immediately get off from the vehicle and started abusing the informant and tried to manhandling.

4. The police after investigation having found case true under Section 504 of the I.P.C., submitted charge-sheet before the jurisdictional Court. Finally, the matter has been placed before the learned Chief Judicial Magistrate, Vaishali at Hajipur and accordingly, cognizance has been taken vide order dated 30.05.2022, which is impugned herein.

5. Learned counsel for the petitioners challenging the order taking cognizance drew the attention of the Court to the impugned order and submitted that the learned Chief Judicial Magistrate has committed error of record by narrating that the original case diary along with charge-sheet no. 343/2016 has been submitted under Sections 353, 504 and 506/34 of the I.P.C., while the fact is that charge-sheet has been submitted



only Section 504 of the I.P.C. The learned Chief Judicial Magistrate further condoned the delay under Section 473 of the CrPC, while passing the order taking cognizance, but without assigning any satisfaction as to what was the facts and circumstances giving the reason for condonation of delay. It is next contended that in order to attract ingredients of offence under Section 504 of the I.P.C., it would be necessary that actual words used or supposed to have been used should be mentioned in complaint/written report and thus on vague allegation, it is not prudent to take cognizance under Section 504 I.P.C. In support of the aforesaid contention, reliance has also been placed on a judgment of this Court in the case of **Shiv Sundar Bharati v. The State of Bihar & Another [2016 (2) PCCR 520]**.

6. On the other hand, learned counsel for the State submitted that at the time of order taking cognizance or summoning an accused, the learned Judicial Magistrate is required to apply his judicial mind only with a view to take cognizance of the offences on the basis of the materials available on record. If the materials are sufficient enough to take cognizance under Sections 353, 504 and 506/34 of the I.P.C., the impugned order cannot be faulted.



7. This Court has heard the learned counsels for the respective parties and also perused the impugned order.

8. *Prima facie*, this Court finds substance in the submissions of learned counsel for the petitioners that the charge-sheet has been submitted only under Section 504 of the I.P.C. However, while taking cognizance of the offences, the learned Chief Judicial Magistrate was of the opinion that the charge-sheet had been submitted under Sections 353, 504 and 506/34 of the I.P.C. Further the order does not reveal as to what was the facts and circumstances, which satisfied the Court to extend the period of limitation or it has been done in the interest of justice, as mandated under Section 473 of the CrPC; admittedly, the charge-sheet has been submitted on 24.09.2016 and the cognizance has been taken on 30.05.2022 for the offences noted above beyond the period as prescribed under Section 468 CrPC.

9. Now, coming to the offence under Section 504 of the Indian Penal Code, as to whether there was ingredients available on record to constitute offence under Section 504 of the I.P.C. and thus whereby allowed the learned Chief Judicial Magistrate to take cognizance, this Court thinks it apt and proper to quote Section 504 of the I.P.C.



"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."

10. In the case of **Shiv Sundar Bharati** (supra), this Court in clear terms has held in para-12, which reads as follows:

"12. Mere abuse unaccompanied by an intention to cause breach of peace or knowledge that breach of peace is likely that such provocation would cause that person to break the peace or to commit any other offence does not come within the offence as defined under Section 504 of the IPC. A vague allegation that the accused abused the opposite party in filthy language would not be sufficient to attract the ingredients of Section 504 of the IPC. In order to attract the ingredients of the offence under Section 504 of the IPC, it would be necessary that actual words used or supposed to have been used should be mentioned in the complaint/written report otherwise it would be extremely difficult for the Court to decide whether or not the words used amounted to intentional insult. Also, the words



used which amounted to intentional insult should be such that it intended to break the peace.”
(emphasis supplied).

11. Undoubtedly, the written report leading to institution of the FIR does not disclose the actual words used or supposed to have been used, which amounted to intentional insult and intended to cause breach of the peace.

12. On account of the reasons noted hereinabove and taking note of the fact that even if the allegation taken to be true, no case much less under Section 504 of the I.P.C. is made out; this Court is of the opinion that continuation of the proceedings in connection with Mahua P.S. Case no. 510 of 2015 corresponding to G.R. no. 5036 of 2015, would be an abuse of the process of the Court and, as such, the impugned order taking cognizance dated 30.05.2022 stands quashed.

13. The quashing application stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NA
CAV DATE	NA
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