

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 912 of 2020

With

CRAN 2 of 2022

Smt. Rekha Ghosh

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Arani Bhattacharyya.

For the State : Ms. Sreyashee Biswas.

For the Opposite Party No. 2 : None.

Hearing concluded on : 19.02.2024

Judgment on : 15.03.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings in G.R. No. 113 of 2019, pending before the Court of the Learned Additional Chief Judicial Magistrate Arambagh, Hooghly under Sections 341/379/506 of the Indian Penal Code, 1860, arising out of Arambagh Police Station Case No. 39 of 2019, dated January 25, 2019 under Sections 341/379/506 of the Indian Penal Code, 1860 and all subsequent orders passed therein.
2. The petitioner states that there are long-standing disputes by and between the parties regarding an illicit extramarital relationship between the sister-in-law (JAA) of the present Petitioner and Opposite Party No.2 herein, as the husband of the said sister-in-law and the Opposite Party No.2 herein have been long time business partners. Thereafter, the present Petitioner's said sister-in-law refused to continue the said extramarital relationship. A criminal proceeding, being Jamalpur Police Station Case No. 186 of 2011 dated 17.12.2011 under Sections 452/406/505/565/379 of the Indian Penal Code, 1860 was instituted by the husband of the present Petitioner, which is still pending adjudication.
3. That in retaliation thereto, the Opposite Party No.2 herein, out of erstwhile grudge, had started threatening her and all her family members of dire consequences and had even consequently, instituted criminal

proceedings, being Arambagh Police Station Case No. 618 of 2014 dated 28.06.2014 under Sections 448/323/325/307/354/379/506/34 of the Indian Penal Code, 1860, against not only the husband of the present Petitioner but also against the Petitioner.

4. That at the time of filing the Charge-Sheet in connection therewith, being Charge-Sheet No. 507 of 2014 dated 31.07.2014, the present Petitioner was not Charge-sheeted and hence, discharged.
5. That in furtherance of the aforesaid existing rivalries and disputes, on 09.07.2018, the Opposite Party No.2 herein filed a Complaint Case, being C.R. Case No. 151/18, before the Additional Chief Judicial Magistrate at Arambagh, Hooghly, against the present Petitioner and her sister-in-law with similar and/or identical allegations, which the Learned Court by an Order dated 30.08.2018 was pleased to dismiss under Section 203 of the Code of Criminal Procedure, 1973 with the observation that the allegations made therein were utterly baseless.
6. That still unsatisfied with vengeance, the Opposite Party No.2 herein has instituted another frivolous criminal proceedings, (the present case) being Arambagh Police Station Case No. 39 of 2019 dated 25.01.2019 under Sections 341/379/506 of the Indian Penal Code, 1860 against the present Petitioner and her sister-in-law.
7. The allegations and accusations, as leveled therein by the Opposite Party No.2 herein against the present Petitioner and others are as follows:-

“That the Opposite Party No.2 herein has a hardware business and he has given hardware materials on loan

to the present Petitioner and her sister-in-law of a sum of around Rs. 60,000/-. But after completion of building of the present Petitioner, she regularly delayed repayment of the requisite charges and in the meantime, on 01 January, 2019 at about 4 p.m. when the Opposite Party No. 2 herein found the present Petitioner and her sister-in-law at the juncture of Arambagh Road and Tirol Road and the Opposite party No.2 herein asked for payment, the present Petitioner and her sister-in-law humiliated and abused him openly, tore his shirt and forcefully snatched away Rs. 1200/- from his pocket. Thereafter the Opposite Party No.2 herein came to the Arambagh Police Station and lodged the instant Complaint.”

8. The Petitioner states that the accusations, as leveled against her, are nothing but fabrication and have been contrived, concocted and made by the Opposite Party No.2 herein, in connivance with his family-members, only with a view to harass and torture the present Petitioner and her family members and to implicate them in non-bailable offences and as such, if the impugned proceedings herein are allowed to continue, instead of reaping any positive results, it would only lead to lasting and irremediable loss of prestige of the present Petitioner.
9. Hence the revision.
10. As per report of the local Police Station, the Complainant/Opposite party no. 2 is at present not living at the address on record and the local panchayat has issued a Certificate to that effect. As such he is not being represented.
11. From the materials on record and the case diary it appears that there is no seizure list in the case. There is also no injury report or any other

Medical papers. Charge Sheet has been submitted for offence punishable under Sections 341/379/506 of IPC.

12. The Complainant's case has been initiated on the basis of the allegation that the accused persons which includes the petitioner had taken cement from his hardware shop but refused to make the payment for the same amounting to Rupees 60,000/- and as he repeatedly asked for the said payment he was allegedly assaulted.
13. **It is seen that there is no document filed by the complainant to support his claim of payment due from the petitioner/accused persons. The alleged sale has also not been prima facie shown.**
14. The Complainant is also not traceable at present.
15. The dispute between the parties, is regarding payment of products sold (no papers) which prima facie is a dispute, civil in nature.
16. **Section 506 of I.P.C., 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.*"

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

18. Section 503 of 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."

19. 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 adverting 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. *XXXXXXXXXXXXX*

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.”

20. In **N.S. Madhanagopal & Anr. Vs K. Lalitha, Criminal Appeal No. 1759 of 2022 (Arising out of SLP (Crl.) No. 6039 of 2022)**, on **October 10, 2022**, the Supreme Court held:-

“Section 341 of the IPC talks about punishment for wrongful restraint. Section 341 reads thus:

“341. Punishment for wrongful restraint - Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both.”

The complaint also fails to disclose the necessary ingredients to constitute the offence of wrongful restraint. In order to attract application of Section 341 which provides for punishment for wrongful restraint, it has to be proved that there was obstruction by the accused; (ii) such obstruction prevented a person from proceeding in a direction to which he had a right to proceed; and (iii) the accused caused such obstruction voluntarily. The obstructor must intend or know or would have reason to believe that the means adopted would cause obstruction to the complainant.

The averments made in the complaint according to us are not sufficient to even constitute the offence of wrongful restraint. In the overall view of the case, we are convinced that no case is made out against the appellants herein as alleged by the complainant.”

21. In **Govind Prasad Kejriwal vs The State of Bihar & Anr., AIR 2020 SC 1079, on 31.01.2020**, the Supreme Court held:-

“6.2 Therefore, the impugned proceedings are nothing but an abuse of process of law and the Court. A purely civil dispute is given a colour of criminal proceedings. As observed above, none of the ingredients of Sections 341 and 379 of the IPC, are satisfied. 6.3 Even none of the ingredients of Section 323 of the IPC, are satisfied. Therefore, even considering the allegations in the complaint as they are, to continue the criminal proceedings against the accused even for the offence under Section 323 shall be an abuse of process of the Court and the law. Therefore, we are of the opinion that this is a fit case to exercise the powers

under Section 482 Cr.P.C., and to quash the impugned criminal proceedings. 6.4 Insofar as the reliance placed upon the decision of Learned Additional Sessions Judge, Barh, in Criminal Revision Application No.31/235 of 2003 relied upon by the learned counsel for the complainant is concerned, it is required to be noted that in the said order there are no finding on merits by the Learned Revisional Court. Revisional Court had only remanded the matter back to the Learned Judicial Magistrate for further inquiry and to pass a fresh order in accordance with law.

6.5 Now so far as the reliance placed on the decision of this Court in the case of National Bank of Oman vs. Barakara Abdul Aziz (Supra) relied upon by the Learned Advocate appearing on behalf of the complainant is concerned, we are of the opinion that in the facts and circumstances of the case, the said decision shall not be of any assistance to the complainant. It cannot be disputed that while holding the inquiry under Section 202 Cr.P.C. the Magistrate is required to take a broad view and a prima facie case. However, even while conducting/holding an inquiry under Section 202 Cr.P.C., the Magistrate is required to consider whether even a prima facie case is made out or not and whether the criminal proceedings initiated are an abuse of process of law or the Court or not and/or whether the dispute is purely of a civil nature or not and/or whether the civil dispute is tried to be given a colour of criminal dispute or not. As observed hereinabove, the dispute between the parties can be said to be purely of a civil nature. Therefore, this is a fit case to quash and set aside the impugned criminal proceedings.

7. In view of the reasons stated hereinabove, the present Appeal succeeds. The order passed by the Learned Magistrate taking cognizance against the accused and issuing the summons against the accused for the offences under Sections 341, 323 and 379 of the IPC and also the impugned Judgment and order passed by the High Court are hereby quashed and set aside. The impugned criminal proceedings initiated against the accused arising out of the Criminal Complaint No.464 of 2001 are hereby quashed and set aside.”

22. Thus in the present case the Complainant has clearly tried to give

a Criminal colour to a civil dispute. There are no documents on record to prima facie substantiate the allegations against the accused

persons in respect of the offences alleged, and the proceedings in this Case is clearly an abuse of the process of law and permitting the present case to proceed towards trial will be against the ends of justice.

23. CRR 912 of 2020 is allowed.

24. The proceedings in G.R. No. 113 of 2019, pending before the Court of the Learned Additional Chief Judicial Magistrate Arambagh, Hooghly under Sections 341/379/506 of the Indian Penal Code, 1860, arising out of Arambagh Police Station Case No. 39 of 2019, dated January 25, 2019 under Sections 341/379/506 of the Indian Penal Code, 1860 and all subsequent orders passed therein, **is hereby quashed.**

25. All connected applications, if any, stand disposed of.

26. Interim order, if any, stands vacated.

27. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

28. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)