

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2043 of 2019

Swami Brahmatmananda Maharaj @ Swami Brahatmananda Maharaj

Vs

Dr. Alak Kumar Maiti & Anr.

For the Petitioner : Mr. Arindam Jana,
Mr. Arhan Sengupta.

For the State : Mr. Md. Anwar Hossain,
Ms. Sreyashee Biswas.

For the Opposite Party No. 1 : Mr. Biplab Mitra,
Ms. Trina Mitra.

Hearing concluded on : 06.02.2024

Judgment on : 29.02.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding being A.C. Case No. 2869/2019 under Sections 500/506 of the Indian Penal Code, 1860 presently pending before the Court of the Learned Judicial Magistrate, 7th Court at Alipore, South 24 Parganas.
2. The petitioner's case is that he is an altruist monk, serving the purpose of humanity, being attached with Bharat Sevasram Sangha in the capacity of Secretary, Bharat Sevasram Sangha Hospital.
3. The petitioner states that the genesis of the instant case dates back to 23.04.2019, when the opposite party filed a petition of complaint before the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas being AC Case No. 2869/2019, alleging commission of offences under Sections 500/506 of the Indian Penal Code against the petitioner.
4. The allegations labeled in the said petition of complaint in brief are to the effect that:-

The opposite party is a reputed doctor attached with Bharat Sevasram Sangha Hospital in the capacity of consultant surgeon and urologist. The petitioner since the last four years had been disturbing and irritating the opposite party in several ways and making the working of the opposite party very difficult. A patient was referred to the opposite party by one Dr. Boral from the OPD with raised Serum Creatinine level and the opposite party advised him to undergo the same test again from another laboratory. The patient followed the advice of the opposite party and the result of such test came as 'normal'. Being dissatisfied by the incident, the patient lodged a complaint with the Chief Medical Officer of Health, who in turn initiated an enquiry and also visited the hospital and called the petitioner and

other important officials of the hospital for the said enquiry. **The petitioner and other officials of the hospital afterwards blamed the opposite party for the said incident and falsely alleged that the opposite party had some sort of access with the Chief Medical Officer of Health. The petitioner, on 05.06.2018 at around 12.30 in the noon called the opposite party in his office and scolded, abused and humiliated him in the presence of Suranjan Brahmachari, the authorized representative of the petitioner and wrongfully accused the opposite party of provoking the patient to lodge a complaint with the Chief Medical Officer of Health for the Hospital's negligence, on the basis of speculation and without any proof.** The opposite party on 08.07.2018 wrote to the petitioner about his disliking the incident of him being scolded and humiliated by the petitioner. Since the above incident, the authority of Bharat Sevasram Hospital had been trying to cut down all the activities of the opposite party in relation to the hospital in highly unethical manner, like diverting the patients to other places. The opposite party served a notice dated 30.08.2018 to the representative of the petitioner enunciating the above incidents. On 06.12.2018 at 10.45 am, when the petitioner arrived at the hospital he found the door of his clinic locked and on enquiry he discovered from the clinic attendant and the floor manager that the key to the clinic was lost and the door of the clinic could not be opened. The opposite party tried to contact the petitioner and other officials of the hospital over phone, but could not contact any of them. The opposite party complained about the above incident to the petitioner by way of a letter dated 07.12.2018, but no action was initiated. The opposite party had a meeting with the director of Bharat Sevasram Sangha and narrated all the incidents to him, who in turn assured to look into the matter, but no action was taken. **The opposite party also wrote a letter dated 20.12.2018 to the president of Bharat Sevasram Sangha stating that the petitioner was harassing him with the intention to defame him by baseless allegations without any proof.** The opposite party had raised his voice against the malpractices of the petitioner including appointment of less qualified doctors as consultants which has been leading to improper treatment and which is also defaming the senior doctors and putting them in bad light in the minds of normal people. The appointment of inexperienced doctors is being still carried on by the petitioner and the radiological and pathological reports

are not accurate. Even after notifying the petitioner many times, no action was taken on that issue, rather level of harassment on the opposite party escalated. The petitioner has been practicing corruption for his personal gain against the principles of mankind. The petitioner has treated the opposite party in inhuman manner and tried to bully the opposite party. The petitioner has been intentionally disturbing and irritating the opposite party to defame him as the opposite party is a well-established doctor in his locality and as such has lost income due to the acts of the petitioner.

5. The petitioner states that upon a put up petition by the opposite party, his initial deposition vide solemn affirmation, in terms of Section 200 of Criminal Procedure Code was taken on record on 02.07.2019. After prima facie finding material to proceed against the petitioner under Sections 500/506 of the Indian Penal Code, by an order dated 02.07.2019 passed by the Learned Judicial Magistrate, 7th Court, Alipore, process was issued against the petitioner under the provisions enunciated under Section 204 of Criminal Procedure Code.
6. The petitioner submits that the instant proceeding is per se bad in law and has been initiated with the sole intention to harass the petitioner.
7. In the instant case, the contents in the petition of complaint, even if taken in its face value, do not satisfy the fundamental ingredients of the offences punishable under Sections 500/506 of the Indian Penal Code. Thus, taking of cognizance of the complaint filed by the opposite party and further issuance of summons against the petitioner is perverse in nature and as such the instant proceeding is liable to be quashed.
8. The opposite party/complainant's case is that he is a very well reputed and dignified doctor and is practicing since 1987 and is also attached to

Bharat Sevasram for a long period of time as a consultant Surgeon and Urologist. The complainant also worked as a Member of the Hospital's Working Committee and is also an enlisted Donor of the Bharat Sevasram Hospital and his developmental activities were also praised by the Hon'ble Chief Minister of West Bengal, Smt. Mamata Banerjee in the year 2012. The complainant only receives convenience allowance for being attached to the Bharat Sevasram Hospital.

9. The opposite party/complainant has further stated that the accused person herein Swami Brahatmananda Maharaj is a monk and is the Secretary of Bharat Sevasram Sangha Hospital situated at P.O. Pailan, P.S. Bishnupur, D.H. Road, near Joka, Kolkata-700 104 and for the past four years he is disturbing and irritating the complainant in several ways making the working of the complainant very difficult.
10. The complainant/opposite party has deposed on oath and the relevant piece of evidence to this case is as follows:-

AC-2866/2019

“..... Following the incident, on 05.06.2018 at noon, the Secretary asked me to meet him at his office where he scolded, abused and humiliated me in the presence of his authorized representative, namely Suranjan Brahmachari. The authority of the Hospital had been trying to cut down all the activities of me in relation to the hospital in highly unethical and unprincipled manners as such by diverting the patients to somewhere else those were to be treated by me. On 06.12.2018, when I visited the hospital to attend my clinic I found out that the door of the clinic was locked and the clinic attendant Miss Sankari Das stated that the keys of the clinic were lost and there are no other way-in to the clinic. I tried to contact the Secretary but it went in vain. I also informed the matter before O/C Bishnupur, P.S. on 14.12.2018. I raised my

voice against all the malpractice which the Secretary is running in the Hospital. The witnesses namely, 1. Ashok Kumar Guha, 2. Smt. Ratna Das, 3. Smt. Supriya Mallick and others will testify the incident during trial. As such the complaint was filed. I pray for issuing process against the accused person.

Sd/-
Judicial Magistrate, 7th Court,
Alipore, South 24 Parganas”

11. The Learned Magistrate vide order dated 02.07.2019, held that:-

AC-2869/2019

Order dated- 02.07.2019

“..... From the initial deposition, a prima facie triable case punishable u/s 500/506 of I.P.C. has been established against the accused person namely, Swami Brahmatmananda Maharaj, the Secretary of Bharat Sevashram Sangha Hospital at Joka under the P.S. – Bishnupur.

Issue process against the accused person at once.....

Sd/-
Judicial Magistrate, 7th Court,
Alipore, South 24 Parganas”

12. The judgment in *Dipankar Bagchi vs State of West Bengal & Anr.*,

2009 SCC OnLine Cal 1877, decided on August 5, 2009, in Para 7

has been relied upon on behalf of the petitioner:-

“7. *In the petition of complaint it has been alleged that the accused with a view to canvass the complainant is a subversive element of the society made oral imputation that he is a dangerous and desperate man and can commit various offence like murder, consequently the close friends and relatives of the complainant started avoiding him. It has been further alleged that in connection with a proceeding under section 107 of the Code it was alleged by the accused that the complainant is a desperate and dangerous person to public peace and tranquility.*

*Thereafter, the accused made false accusation against the complainant and his mother which figured the complainant a loathsome person in the estimation of the society and consequently complainant is suffering from ex-communication and interdict and his reputation and social status has been damaged. The imputation that the complainant is a dangerous and desperate person and can commit Crime including murder and he is desperate and dangerous to public peace and tranquility is not per se defamatory. Therefore, there must be some prima facie evidence that in the estimation of the general public by such imputation the reputation of the complainant has been harmed and lowered down. In the case at hand, the complainant in support of his allegations examined two persons, viz., one Adhir Kumar Biswas his neighbour and his son-in-law Kabindra Dutta Gupta under section 200 of the Code of Criminal Procedure. According to the witness Adhir Kumar Biswas after the accused Dipankar Bagchi lodged a case under section 107 of the Code of Criminal Procedure against the complainant the local people started disliking the complainant although he is a good gentleman. The accused Dipankar Bagchi intentionally harassed the family of the complainant. While according to the witness Kabindra Dutta Gupta the accused spread rumor about the complainant in the locality that he is a man of loose character and drunkard. Consequently, people started avoiding him and his family and the witnesses being his son-in-law, his prestige has been lowered down. None of the said witnesses neither alleged nor it is their evidence due to such imputation the moral and intellectual character of the complainant has been lowered down in their estimation and thereby his reputation has been harmed. The inference of the said witnesses that due to such imputation the reputation of the complainant has been lowered down in the estimation of the public is of no use to make out an offence of defamation. **No witnesses have been examined in whose estimation the reputation of the complainant has been lowered down due to such imputation made by the accused.***

13. In the present case also no witnesses in support of the complainant's case have been examined.

14. Section 499 of the Indian Penal Code lays down as follows:-

“Section 499. Defamation.— Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the case hereinafter excepted, to defame that person.

Explanation 1.— It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.— It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.— An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.— No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

First Exception.— Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.— Public conduct of public servants.— It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.— Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any

person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception.— Publication of reports of proceedings of Courts.—It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings. *Explanation.*— A Justice of the Peace or other officer holding an enquiry in open court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.— Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception.— Merits of public performance.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.— A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Seventh Exception.— Censure passed in good faith by person having lawful authority over another.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth Exception.— Accusation preferred in good faith to authorized person.—It is not defamation to prefer in good faith an accusation against any person to any of those

who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception.— *Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.*

Tenth Exception.— *Caution intended for good of person to whom conveyed or for public good.— It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.”*

15. Section 500 of the Indian Penal Code lays down as follows:-

“Section 500. Punishment for defamation.— *Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.*

Scope.— *The essential ingredient of the offence is that the imputation should have been made or published with the intention of harming or with the knowledge or with reasons to believe that the imputation will harm the reputation of such person.*

Ingredients of offence.— *The offence of defamation consist of three essential ingredients, viz.:*

(1) Making or publishing any imputation concerning any person;

(2) Such imputation must have been made by words either spoken or intended to be read, or by signs, or by visible representations, and

(3) Such imputation must have been made with the intent to harm, or with knowledge or belief that it will harm the reputation of the person concerned.”

16. Prima facie this is a private civil dispute. The criminal complaint against the petitioner is under Sections 500/506 of the Indian Penal Code.
17. **In 2014, Dr. Subramanian Swamy made corruption allegations against Ms. Jayalathitha.** In response, the Tamil Nadu State Government filed defamation cases against Dr. Swamy. Thereafter, Dr. Swamy and other prominent politicians challenged the constitutionality of the criminal defamation law in India, i.e., Sections 499 and 500 of the Indian Penal Code (IPC). A two-judge bench of the Supreme Court comprising Justices Dipak Misra and P. C. Pant decided the case.
18. Section 499 defines defamation and Section 500 prescribes the punishment. Defamation is defined as spoken or written words or visible representations, concerning any person intended to harm his/her reputation. Exceptions to this include an ‘imputation of truth’ required for a ‘public good’, or the conduct of any person touching any public question, or expressing opinions on a public performance.
19. The challenge before the Court was twofold – first, whether criminalising defamation is an excessive restriction on freedom of speech, and second, whether the criminal defamation law under Sections 499 and 500 is vaguely phrased and hence arbitrary.
20. On 13 May 2016, the Court held that Section 499 is not an excessive restriction under Article 19(2). It held that society is a collection of individuals, and what affects individuals also affects the society as a whole. Hence, it held that it is valid to treat defamation as a public

wrong. It held that criminal defamation is not a disproportionate restriction on free speech, because protection of reputation is a fundamental right as well as a human right.

21. The Court relied on the judgments of other countries and reaffirmed the right to reputation as a part of the right to life under Article 21. Using the principle of 'balancing of fundamental rights', the court held that the right to freedom and speech and expression cannot be "allowed so much room that even reputation of an individual which is a constituent of Article 21 would have no entry into that area".
22. Further, the Court held that Sections 499 and 500 IPC are not vaguely worded or ambiguous. Using the **Constituent Assembly Debates** to understand what the framers of the Constitution meant by the word "defamation" in Article 19(2), the Court held that the word is its own independent identity. It stands alone and defamation laws have to be understood as they were when the Constitution came into force.
23. The Supreme Court in ***Subramanian Swamy vs. Union of India, Ministry of Law and others, (2016) 7 SCC 221***, while deciding the case held:-

*"We have referred to these authorities to highlight that in matters of criminal defamation the heavy burden is on the Magistracy to scrutinise the complaint from all aspects. The Magistrate has also to keep in view the language employed in **Section 202 Cr.P.C.** which stipulates about the residence of the accused at a place beyond the area in which the Magistrate exercises his jurisdiction. He must be satisfied that ingredients of **Section 499 Cr.P.C.** are*

satisfied. Application of mind in the case of complaint is imperative.

*We will be failing in our duty if we do not take note of submission of Mr. Bhambhani, learned senior counsel. It is submitted by the learned senior counsel that Exception to **Section 499** are required to be considered at the time of summoning of the accused but as the same is not conceived in the provision, it is unconstitutional. It is settled position of law that those who plead Exception must prove it. It has been laid down in M.A. Rumugam (supra) that for the purpose of bringing any case within the purview of the Eighth and the Ninth Exceptions appended to **Section 499** IPC, it would be necessary for the person who pleads the Exception to prove it. He has to prove good faith for the purpose of protection of the interests of the person (1998) 5 SCC 749 making it or any other person or for the public good. The said proposition would definitely apply to any Exception who wants to have the benefit of the same. Therefore, the argument that if the said Exception should be taken into consideration at the time of the issuing summons it would be contrary to established criminal jurisprudence and, therefore, the stand that it cannot be taken into consideration makes the provision unreasonable, is absolutely an unsustainable one and in a way, a mercurial one. And we unhesitatingly repel the same.*

*In view of the aforesaid analysis, we uphold the constitutional validity of **Sections 499** and **500** of the Indian Penal Code and **Section 199** of the Code of Criminal Procedure. During the pendency of the Writ Petitions, this Court had directed stay of further proceedings before the trial court. As we declare the provisions to be constitutional, we observe that it will be open to the petitioners to challenge the issue of summons before the High Court either under **Article 226** of the Constitution of India or **Section 482** Cr.P.C., as advised and seek appropriate relief and for the said purpose, we grant eight weeks time to the petitioners. The interim protection granted by this Court shall remain in force for a period of eight weeks. However, it is made clear that, if any of the petitioners has already approached the High Court and also become unsuccessful before this Court, he shall face trial and put forth his defence in accordance with law.”*

The Court further held:-

“The court while deciding over the matter considered various landmark judgments including the Gian Kaur v. State of Punjab (1996) 2 SCC 648, Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others (1983) 1 SCC 124 to come to the peroration of inclusion of the right to reputation under Article 21. Over the issue of the exaggeration of ‘defamation’ under the restrictions of Article 19(1)(a) the court referred to the speech of Dr. B. R. Ambedkar and pointed out the intention of drafters to include reasonable restrictions on free speech and expression through the means of Article 19(2) without specifically defining the terms like ‘defamation’, ‘public order’ etc. and left it to the courts to decide what would constitute as restriction and what not so as to not restrict the meaning of any such term.

The court disregarded the dissection of rights and their enjoyment under Article 19 and 21 as contested by petitioners while holding that every citizen enjoys every right under the constitution simultaneously and took reference from Sakal Papers (P) Ltd. v. Union of India AIR 1962 SC 305 and the Maneka Gandhi v. Union of India and another (1978) 1 SCC 248. To decide upon the constitutionality of Section 499 and its exceptions the bench, while individually determining each exception and various clauses in the provision, clearly enunciated that there is no vagueness in the whole section. The argument of petitioner over the ‘public good’, the court referred the argument as unnecessary and concluded that what can be termed as a public good is a subject matter of facts and has to decide on a case-to-case basis. The court declared section 499 of IPC, as well as Section 199 of Cr.P.C. constitutional as it being a subject matter of magistrate to ensure that the judicial process doesn’t become a tool of harassment and inherent duty of the magistrate to take care of it and concluded that the judiciary is independent of the political stigma, therefore, the arguments of petitioners stand void.”

24. The facts as stated in the written complaint in this case comes under 7th, 8th, 9th and 10th exceptions as laid down under Section 499 of I.P.C. and thus the ingredients required to constitute the offence alleged under Section 500 of I.P.C. is clearly absent in the present case.

25. Next offence alleged is under Section 506 of I.P.C.

26. 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,

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.

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.”*

27. In *Mohammad Wajid & Anr. vs State of U.P. & Ors., Criminal Appeal No. 2340 of 2023 (arising out of SLP (Criminal) No. 10656 of 2022)*, on August 08, 2023, the Supreme Court held:-

“27. A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant.”

28. The Court further held:-

“30. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of

wreaking vengeance out of private or personal grudge as alleged.”

29. The term Criminal intimidation has been defined under Section 503 of I.P.C.

30. Section 503 of I.P.C., 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.”

31. 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. *XXXXXXXXXXXXXX*

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.”

32. In present case, the facts and circumstances of the case and more particularly, considering the nature of the allegations levelled in the FIR, a prima facie case to constitute the offence punishable under Section 506 of the IPC could not be said to have been disclosed. The allegations with respect to the offence punishable under Section 506 of the IPC can also be looked at from a different perspective. In the FIR, all that the first

informant has stated is that abusive language was used by the accused persons. What exactly was uttered in the form of abuses is not stated in the FIR. One of the essential elements, as discussed above, constituting an offence under Section 506 of the IPC is that there should have been an act or conduct amounting to intention to cause alarm. Where that act is the use of the abusive words, it is necessary to know what those words were in order to decide whether the use of those words amounted to intention to cause alarm. In the absence of these words, it is not possible to decide whether the ingredient of intention to cause alarm is present.

(Mohammad Wajid & Anr. vs State of U.P. & Ors., (Supra)). As such the ingredients required to constitute an offence under Section 506 of IPC is also prima facie not present against the petitioner.

33. The prosecution in this case is clearly lacking in the requirement of ingredients to constitute an offence under Section 506 of IPC.

(i) The petitioner being the Secretary of the charitable organization (position of lawful authority) and the complainant allegedly not being permitted to work, and censured (in good faith), the said act if any is “not threatening”.

(ii) There was no threat of any injury to the person (complainant), his reputation or property or in whom he was interested.

(iii) There was **clearly no intention to cause alarm** to the complainant.

34. Accordingly it is clear that the ingredients required to constitute the offence alleged under Section 506 of IPC are not prima facie present against the petitioner.

35. The Supreme Court in *M/s Neeharika Infrastructure Vs. The State of Maharashtra (on 13 April, 2021)*, in Criminal Appeal No. 330 of 2021, citing several precedents held :-

“ * * * * *

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

vi) Criminal proceedings ought not to be scuttled at the initial stage;

ix) The functions of the judiciary and the police are complementary, not overlapping;

xiii) The power under **Section 482 Cr.P.C.** is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of *R.P. Kapur (supra)* and *Bhajan Lal (supra)*, has the jurisdiction to quash the FIR/complaint;

* * * * *

36. In ***Ramveer Upadhyay & Anr. Vs State of Uttar Pradesh & Anr., Special Leave petition (CRL.) No. 2953 of 2022, decided on April 20, 2022***, the Supreme Court held:-

“39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under **Section 482** of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under **Section 482** of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. **Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.**”

37. In ***Umesh Kumar Vs State of Andhra Pradesh and Anr. (Supra)*** the Supreme Court **also** held :-

“20. The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it

is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial. (Vide *Pepsi Foods Ltd. v. Judicial Magistrate* [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128], *Ashok Chaturvedi v. Shitul H. Chanchani* [(1998) 7 SCC 698 : 1998 SCC (Cri) 1704 : AIR 1998 SC 2796], *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] and *Padal Venkata Rama Reddy v. Kovvuri Satyanarayana Reddy* [(2011) 12 SCC 437 : (2012) 1 SCC (Cri) 603].)

21. In *Rajiv Thapar v. Madan Lal Kapoor* [(2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] this Court while dealing with the issue held as follows : (SCC p. 348, para 30)

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court

under Section 482 of the Code of Criminal Procedure:

30.1. Step one : Whether the material relied upon by the accused is sound, reasonable and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two : Whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three : Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four : Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

22. In State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] this Court dealt with an issue of whether an application under Section 482 CrPC for quashing the charge-sheet should be entertained before cognizance is taken by a criminal court and held as under : (SCC pp. 269-70, para 68)

"68. ... Quashing the charge-sheet even before cognizance is taken by a criminal court amounts to 'killing a stillborn child'. Till the criminal court takes cognizance of the offence there is no

criminal proceedings pending. I am not allowing the appeals on the ground that alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit in the guise of prima facie evidence to stand an accused for trial amounts to pre-trial of a criminal trial.... It is not to suggest that under no circumstances a writ petition should be entertained. ... The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent court. It is not the case that no offence has been made out in the charge-sheets and the first information report.”

(emphasis supplied)

23. *The issue of mala fides loses its significance if there is a substance in the allegation made in the complaint moved with malice. In Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82 : AIR 1987 SC 877] this Court held as under : (SCC p. 318, para 16)*

“16. ... It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant.”

24. In Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193 : AIR 2007 SC 1274] *this Court held as under : (SCC p. 43, para 74)*

“74. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political

difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained.”

25. In State of A.P. v. Golconda Linga Swamy [(2004) 6 SCC 522 : 2004 SCC (Cri) 1805 : AIR 2004 SC 3967] this Court held as under : (SCC p. 529, para 8)

“8. ... It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”

(See also K. Karunakaran v. State of Kerala [(2007) 1 SCC 59 : (2007) 1 SCC (Cri) 251].)

26. *Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal.*

27. *The scheme for inquiry/trial provided under CrPC is quite clear. After investigation, report under Section 173(2) CrPC is to be submitted before the competent court i.e. the Magistrate having jurisdiction in the matter and the Magistrate may take cognizance under Section 190 CrPC. However, it is still open to the Magistrate to direct further investigation under the provisions of Section 173(8) CrPC. If the case is triable by the Court of Session, the Magistrate would commit the case to the said court under Section 209 CrPC. It is for the court to examine*

whether there is sufficient material collected during investigation and filed along with the charge-sheet that a prima facie view can be taken to proceed against the accused and in view thereof, frame charges under Section 228 CrPC. At this stage the remedy available to the accused is to ask for discharge under Section 227 CrPC. In case charges are framed the accused has to face the trial, charges can be added/alterd at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216 CrPC. The only legal requirement is that a witness has to be recalled as provided under Section 217 CrPC when a charge is altered or added by the court.”

38. **The materials on record** herein clearly do not make out a prima facie case under Sections 500/506 of the Indian Penal Code against the accused/petitioner and there are no materials in this case for proceeding against the accused/petitioner towards trial and this is a fit case where the inherent power of the court should be exercised.
39. The ultimate test therefore, is whether the allegations have any substance (***Prakash Singh Badal Vs State of Punjab, AIR 2007 SC 1274***).
40. In the Present case there is no substance in the allegations and no material exists to prima facie make out the complicity of the applicant in offences under Sections 500/506 of IPC and as such the proceeding in this case is liable to be quashed.
41. **CRR 2043 of 2019 is allowed.**

- 42.** The proceedings being A.C. Case No. 2869/2019 under Sections 500/506 of the Indian Penal Code, 1860 presently pending before the Court of the Learned Judicial Magistrate, 7th Court at Alipore, South 24 Parganas, **is hereby quashed in respect of the petitioner namely Swami Brahmatmananda Maharaj @ Swami Brahatmananda Maharaj.**
- 43.** All connected applications, if any, stand disposed of.
- 44.** Interim order, if any, stands vacated.
- 45.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 46.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)