

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1850 of 2020

Arpita Pal & Ors.

Vs

Sushil Chandra Pal.

For the Petitioners

: Mr. Sabyasachi Chatterjee,
Mr. Akashdeep Mukherjee,
Mr. Omar Faruk Gazi,
Ms. Soumali Das,
Ms. Indrani Roy,
Mr. Soumyadeep Nag,
Mr. Suman Sarkar.

For the Opposite Party

: Ms. Subhasree Patel,
Mr. Soham Banerjee.

Hearing concluded on

: 30.01.2024

Judgment on

: 23.02.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of proceedings in Complaint Case No. 207 of 2017 dated under Sections 504/506/34 of the Indian Penal Code, 1860 pending before the Learned 4th Judicial Magistrate at Barasat.

FACTS:-

2. The petitioner No. 1 is the daughter in law of the opposite party. The other petitioners are her parents and other family members.
3. The petitioner no. 1 states that she was compelled to live in her parental house "*due to several cruel treatments by the persons of her matrimonial house*". A case being Rishra Police Station case no. 34 of 2016 under Sections 498A/406/307 of the Indian Penal Code, 1860 filed by the petitioner no. 1 is pending before Learned Additional Chief Judicial Magistrate at Shreerampore.
4. The allegations against the petitioners in short are that the petitioner no. 1 use to call the son of complainant and threaten him with dire consequences and also use filthy language.
5. The petitioners state that the complainant and his son instituted two different cases on similar cause of action, one is Special No. 222 of 2018 corresponding to Complaint Case No. 460 of 2017 dated under Sections 500/501/502/504/506/34 of the Indian Penal Code, 1860 pending before the Special Judge (MP & MLA Court) at Barasat and another

before the Learned Chief Judicial Magistrate at Barasat under Sections 504/506/34 of the Indian Penal Code, 1860 being Complaint case no. 207 of 2017 dated 09.02.2017. It is submitted that both these cases are the counter blast of Rishra Police Station Case No. 34 of 2016 under Sections 498A/406/307 of the Indian Penal Code, 1860.

6. It is stated that the petitioners have been falsely implicated in the present case and there is no involvement of the petitioners in the commission of offences as alleged in the instant case.

7. From the petition of Complaint, it appears that:-

- i) The Complainant's son was married to the petitioner no.1 and since their marriage, the petitioners are creating trouble in the Complainant's family. The petitioner no. 1 regularly used to quarrel with the son of the complainant.
- ii) The petitioner no.1 allegedly kept going to her parent's house, refusing to return, but the complainant's son kept bringing her back on assurances.
- iii) The petitioner no. 1 allegedly used to abuse the son of the Complainant in filthy language and thereafter filed a complaint under Section 498A of the Indian Penal Code.
- iv) The petitioner no. 1 allegedly left her matrimonial home on 04.04.2015 by taking all her articles and valuables.
- v) **On 07.06.2015 the petitioner no. 1 & 3 allegedly attacked the Complainant's house and abused them in filthy language**

in public (before the local people) and also threatened to throw the complainant out of his house by using the laws in favour of the women.

- vi) The petitioner no. 1 has filed a case under the PWDV Act, against the Complainant and his son.
- vii) The petitioner no. 1 and 3 then started staying in the Complainant's house and continued to abuse every person in the house and also continued to threaten.
- viii) On 21.09.2015, the petitioner no. 1 wrote to the Complainant's previous office claiming the Complainant's pension as maintenance for which the Complainant has suffered a loss of face and self respect.
- ix) The petitioner No.1 filed a case under Sections 498A/406/307 of the Indian Penal Code, one year after leaving her matrimonial home and also continued to threaten the Complainant's son over phone and spreading lies about him.
- x) Then allegedly on several days over phone (Social media/SMS/e-mail) the petitioner no.1 threatened and abused the Complainant's son in filthy language and making false vulgar allegations.
- xi) The petitioner no.1 is a divorcee and suppressing the same has married the Complainant's son.

8. The proceedings in the present case has been initiated for offence punishable under Sections 504/506/34 of the Indian Penal Code.

9. **Section 504 of I.P.C., lays down:-**

“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.

Ingredients of offence.- The essential ingredients of the offence under sec. 504 are as follows:-

- (1) The accused intentionally insulted someone;
- (2) He thereby intended to give him provocation;
- (3) He knew that it was likely that such provocation would cause that person to commit a breach of the peace or to commit any other offence.”

10. **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.”

11. 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:-

“24. An offence under Section 503 has following essentials:-

- 1) Threatening a person with any injury;
 - (i) to his person, reputation or property; or
 - (ii) to the person, or reputation of any one in whom that person is interested.
- 2) The threat must be with intent;
 - (i) to cause alarm to that person; or
 - (ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or
 - (iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

25. Section 504 of the IPC contemplates intentionally insulting a person and thereby provoking such person insulted to breach the peace or intentionally insulting a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of the public peace or to commit any other offence. Mere abuse may not come within the purview of the section. But, the words of abuse in a particular case might amount to an intentional insult provoking the person insulted to commit a breach of the public peace or to commit any other offence. If abusive language is used intentionally and is of such a nature as would in the ordinary course of events lead the person insulted to break the peace or to commit an offence under the law, the case is not taken away from the purview of the Section merely because the insulted person did not actually break the peace or commit any offence having exercised selfcontrol or having been subjected to abject terror by the offender. In judging whether particular abusive language is attracted by Section 504, IPC, the court has to find out what, in the ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline.

It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant.

26. *Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant. In **King Emperor v. Chunnibhai Dayabhai**, (1902) 4 Bom LR 78, a Division Bench of the Bombay High Court pointed out that:-*

“To constitute an offence under Section 504, I.P.C. it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. Public peace can be broken by angry words as well as deeds.”

(Emphasis supplied)”

12. The Court further 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.”*

- 13.** 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 may probably could be said to have been disclosed but not under Section 504 of the IPC. The allegations with respect to the offence

punishable under Section 504 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 504 of the IPC is that there should have been an act or conduct amounting to intentional insult. 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 intentional insult. In the absence of these words, it is not possible to decide whether the ingredient of intentional insult is present. **(Mohammad Wajid & Anr. vs State of U.P. & Ors., (Supra))**. As such the ingredient required to constitute an offence under Section 504 IPC is prima facie not present against the petitioners.

14. It thus appears from the record that there are prima facie materials to show that the petitioner no. 1 and 3 had the intention to cause alarm to the complainant. As such the ingredients required to constitute an offence under Section 506 IPC is on record in respect of the petitioner no. 1 and 3, Arpita Pal and Gopa Das. The petitioner no. 1 and 3 are to face trial in respect of the said offence.

15. **CRR 1850 of 2020 is allowed.**

16. The proceedings in Complaint Case No. 207 of 2017 dated under Sections 504/506/34 of the Indian Penal Code, 1860 pending before the

Learned 4th Judicial Magistrate at Barasat **is hereby quashed in respect of the petitioners namely Subir Das and Arpan Das.** The offence under Section 504 IPC is also quashed in respect of the petitioners namely Arpita Pal and Gopa Das. **But the petitioners, Arpita Pal and Gopa Das are to face trial in respect of the offence under Sections 506/34 of IPC.**

- 17. Trial Court to proceed accordingly in respect of accuseds Arpita Pal and Gopa Das.**
- 18.** All connected applications, if any, stand disposed of.
- 19.** Interim order, if any, stands vacated.
- 20.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 21.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)