



2025:DHC:439



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on : 27.01.2025

+ **CRL.M.C. 4573/2019 & CRL.M.A. 35614/2019**

ASEEM MOWAR

.....Petitioner

versus

STATE & ANR.

..... Respondents

Advocates who appeared in this case:

For the Applicant : Mr. Shiri Singh, Mr. Nikhil Pillai, Mr. Athak Walia and Ms. Surabhi, Advs.

For the Respondent : Mr. Ajay Vikram Singh, APP for the State. Adv. Sudhir Tewatia, Adv. Prashant Solanki, Adv. Rakesh Kumar Solanki, Adv. Mehul Gulati & Adv. Manisha for R-2.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') essentially seeking quashing of FIR No. 478/2015 dated 28.11.2015, registered at Police Station Sector 23 Dwarka, for offences under Sections 354/509/506 of



the Indian Penal Code, 1860 ('IPC') and all consequential proceedings arising therefrom.

2. The petitioner has also challenged the order and 14.07.2016, passed by the learned Trial Court, in the proceedings emanating from the aforesaid FIR, to the extent that charges were framed against him for offences under Sections 341/509/352 of the IPC. By the same order the petitioner was discharged for the offences 506 IPC and Section 11 of the Prevention of Cruelty of Animals Act, 1960.

3. The brief facts of the case are as follows:

3.1. On 28.11.2015, FIR no. 478/2015 was registered for offences under Sections 354/509/506 of the IPC at the instance of Respondent No.2 alleging that the petitioner, who is her neighbour, had threatened her and also subjected her to severe harassment during the course of past two years. Two and a half years prior to the registration of the FIR, Respondent No. 2 had become the owner of a pet Abyssinian breed cat named Chiku, and she started going to the terrace of her apartment building for exercising in early morning. It is alleged that the petitioner, who owns two flats on the top floor, started objecting to the morning walks of Respondent No.2 and accused her of not closing the water taps properly. It is alleged that the petitioner also complained to Respondent No.2 that her pet cat eats grass and plants on the terrace and dirties the same. Respondent No.2 further alleged that on one occasion, the petitioner had physically tried to obstruct her passage on the terrace a few months ago and threatened to inflict severe physical harm on her and her cat if she came on the terrace.



The Petitioner allegedly lunged at Respondent No.2's cat and hit her with a stick as well during the altercation. Respondent No. 2 gave a written complaint to the Building Management 26.10.2015, however, no action was taken.

3.2. It is alleged that on the morning of 21.11.2015, Respondent no. 2 took her cat to the terrace for a morning walk, and the pet slept under a cooler which was on the portion of terrace which is over the petitioner's flats. However, when Respondent no. 2 went to get her pet back from the terrace, she was shocked to not find it there. The petitioner was allegedly present on the terrace with a yoga instructor at that time. Thereafter, Respondent No. 2 searched frantically for her missing cat. Meanwhile, the petitioner allegedly subjected Respondent No.2 to mental harassment by instigating other neighbours to pick up fights with Respondent No.2 and her parents. It is alleged that the petitioner also allegedly threatened Respondent No.2 that if she ever used the terrace or made any complaints against him, she would also disappear like her cat. The cat was eventually found in a mud ditch near Pochanpur village, even though, the cat had never gone out of the building without Respondent No.2. Respondent No.2 alleged that she felt scared for her safety as well as for her parents and cat due to the alleged violent behaviour of the petitioner.

3.3. On 02.12.2015, the statement of Respondent no.2 was recorded under Section 164 of the CrPC where she furnished additional details about the alleged incident and alleged that three months back, the petitioner had threatened her of dire consequences if he ever saw her



or her cat on the terrace and he grabbed hold of her and pushed her violently due to which she fell on the stairs. She further alleged that the petitioner had also abused her.

3.4. After completion of the investigation, chargesheet was filed against the petitioner for offences under Sections 341/506/509 of the IPC and Section 11 of the Prevention of Cruelty of Animals Act, 1960.

3.5. The learned Trial Court *vide* order dated 14.07.2016 decided that petitioner should be discharged under Section 11 of Prevention of Cruelty of Animal Act, 1960 and under Section 506 of the IPC and framed charges under Sections 341/509/352 of the IPC against the petitioner. The relevant portion of the order dated 14.07.2016 is reproduced hereunder:

*“8. Ld. Counsel for accused has argued that statement cannot be relied upon as this amounts to improvement. In my opinion, it does not amount to improvement as it is very early to comment upon the statement of witness. She will be subjected to cross examination and only thereafter it can be concluded whether her testimony is believable or not or the improvement of such a nature which affects the case. The allegations contained in the statement u/s 164 Cr.PC and the initial statement appears to be consistent at this stage.... **Section 339 IPC clearly states that whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has right to proceed. The punishment for wrong restrained has been defined in Section 341 IPC. The allegations contained in the initial complaint and in the statement u/s 164 Cr.PC, the witness has clearly stated that about the wrongful restrain as she was stopped by the accused from proceeding towards the terrace.***

*9. So far as **Section 352 IPC** is concerned, whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person. Criminal force has been defined u/s 350 IPC, whoever intentionally used force to any person without that person consent. **There are specific allegation***



that accused grabbed hold of complainant and pushed her violently. There are specific allegations of Section 509 IPC in her statement u/s 164 Cr.PC.

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*11. No offence is made out u/s 11 of Prevention of Cruelty of Animal Act, in as much as, it has not been stated in the charge sheet as to which sub-clause is attracted as there is a bar with respect to the cognizability of the offence u/s 31 of Prevention of Cruelty of Animal Act, and also limitation is attracted u/s 36 of Prevention of Cruelty of Animal Act. Hence, **accused is discharged u/s 11 of Prevention of Cruelty of Animal Act.***

(emphasis supplied)

3.7 The petitioner filed a revision petition, being, CR No. 204/2019, against the order of the learned Trial Court dated 14.07.2016. The revision petition was dismissed by the learned Revisional Court by order dated 31.07.2019. It was observed that there are specific allegations against the petitioner in the complaint as well as Respondent No.2's statement under Section 164 of the CrPC. It was further noted that while the accused can have benefit of omission of facts in the statements but not of elaboration of facts. The learned Revisional Court also rejected the argument of the petitioner in relation to the investigation being improper and case being trivial. The relevant portion of the said order is reproduced hereunder:

*"4. From the perusal of charge sheet, it transpires that there are specific allegations against revisionist/accused in the complaint and in the statement of the complainant recorded U/Sec. 164 Cr.P.C... Some time when different statements are made on different occasions during investigation the facts are repeated in different word but version is not changed and that can not give a ground to the petitioner to take benefit at the time of charge. **The accused can have benefit of the omission of the facts in statements but not for elaboration of the facts. Prima-facie case is duly made out in the case.***



5. *The law on Triviality U/Sec. 95 of IPC can not also come to the aid of accused because in the present case there are not only allegations of mischief committed with the pet **but there are further allegations of the complainant with respect to her privacy and right of dignified life and liberty and that can not be covered under the term of triviality..***

6. *Charge-sheet has been filed. It is not the case of the accused that there were some documents pertaining to him which should have been considered by the investigating agency. The contents of the complaint was to be investigated by the IO and that has been done so in these circumstances it can not be held that investigation is not proper and accused should be discharged.”*

(emphasis supplied)

3.8 The order on charge dated 14.07.2016 was also challenged by Respondent No.2 in revision petition, being, CR 440453/16 on the ground that the learned Trial Court had erroneously discharged the petitioner from the offences under Section 506 of the IPC and Section 11 of the Prevention of Cruelty to Animals Act, 1960. The same was dismissed by the learned Revisional Court by a separate order dated 31.07.2019. It was noted that in her complaint dated 26.10.2015, Respondent No.2 had not mentioned the alleged incident as stated by her in her statement under Section 164 of the CrPC. It was further noted that the time of the incident could not be ascertained and there is bar to cognizability in view of the limitation under Section 36 of the Prevention of Cruelty to Animals Act, 1960. The relevant portion of the order dated 31.07.2019 is reproduced hereunder:

*“4.... In her complaint given to the President of Bank Vihar CGHS dt. 26.10.2015 **the complainant has nowhere mentioned the incident which she is referring in the complaint and statement U/Sec. 164 Cr.P.C. by citing the incident as around few months back in the complaint and around three months back in the statement U/Sec. 164 Cr.P.C.***



5. Perusal of the complaint, statement U/Sec. 164 Cr.PC. and the complaint made to the President of CGHS shows that the time of alleged threatening to cause harm to the complainant and Cheeku is not clear. So in these circumstances at this stage the exact time of the alleged threatening qua pet can not be ascertained and as such it can not be held that there is any ambiguity or error or illegality in the order under challeng vide which the Ld. Trial Court has reached to the conclusion that there is bar with respect to the cognizability of the offence U/S 11 of Prevention of Cruelty of Animal Act in view of the limitation attracted U/Sec. 36 of the said act. As far as the offence U/Sec.506 IPC is concerned there are no specific and clear allegations in the complaint with regard to the offence U/Sec. 506 IPC.”

(emphasis supplied)

4. The learned counsel for the petitioner submitted that the impugned proceedings are an abuse of the process of law and deserve to be quashed by this Court. He submitted that the allegations against the petitioner are so absurd and inherently improbable that there is no sufficient ground for proceeding against him.

5. He further submitted that statement of Respondent no. 2 under Section 164 CrPC cannot be used as a substantive piece of evidence, in absence of any underlying material, and could only be used for contradicting or corroborating the versions of events stated by said person. He further stated that the learned Trial Court ought not to have framed charges *qua* the petitioner, while solely relying on the substantially improved testimony of Respondent No. 2, in the absence of any other piece of evidence to corroborate her version of events.

6. He submitted that no preliminary enquiry had been conducted by the Investigating Agency, despite the complainant having made a belated complaint. He further submitted that the arrest of the petitioner



was illegal since it was made 9 days after the registration of FIR, without any plausible justification or even furnishing a notice under Section 41A of the CrPC to the petitioner.

7. He submitted that despite there being over 300 residents forming part of the apartment complex, no eye witness and no other substantive piece of evidence like CCTV footage or voice recording was ever even considered by the Investigating Agency in order to corroborate Respondent No. 2's version. He submitted that the key witnesses were not examined to check the veracity of the frivolous allegations levelled by Respondent No. 2, such as the ladies who furnished representation dated 09.10.2015; Ms. Poonam who is the neighbour who allegedly also threatened Respondent No. 2; the yoga instructor who was allegedly present with the Petitioner on the date when Respondent No. 2 lost her cat; and Respondent No. 2's own family who lived in the same apartment complex.

8. He submitted that even if the case of Respondent No.2 is taken at the highest, none of the ingredients of the offence under Section 341 IPC are met. He further submitted that the charge under Section 352 IPC was framed without affording the petitioner an opportunity to be heard.

9. He submitted that the charge under Section 509 IPC against the petitioner is based on vague and contradictory statements by Respondent No. 2, which differ from her police complaint dated 28.11.2015.



10. He submitted that the impugned proceedings stem from disputes over terrace access and the conduct of Respondent no.2's cat and the same should have been quashed in view of Section 95 of the IPC. He submitted that a review of Respondent No. 2's complaints reveals inconsistencies and substantial embellishments aimed at falsely implicating the petitioner and Section 95 IPC is intended to exclude cases that technically fall within the law's language but do not align with its spirit.

11. *Per contra*, the learned Additional Public Prosecutor for the State submitted that the learned Trial Court as well as the learned Revisional Court rightly observed that a *prima facie* case is made out against the petitioner. He submitted that the arguments in relation to inconsistencies in the statement of Respondent No.2 will be seen during the course of the trial after the parties have led their evidence.

12. The learned counsel for Respondent No.2 submitted that the allegations as levelled by Respondent No.2 have to be taken at a demurrer and the arguments raised by the petitioner is in the nature of defence which can only be tested during the course of trial.

13. He submitted that the scope of power of this Court under Section 482 of the CrPC is limited and this Court should not exercise the same before the parties have had an opportunity to establish their case.

ANALYSIS

14. In the present case, the petitioner has challenged the order on charge dated 14.07.2016, which had already been challenged by him



in revision before the learned Revisional Court. It is relevant to note that while it is settled law that a second revision cannot be filed in terms of the bar under Section 397 of the CrPC, the inherent power of this Court under Section 482 of the CrPC has a wide ambit and can be exercised in the interest of justice. It is settled law that the power under Section 482 of the CrPC is to be exercised cautiously and sparingly, especially when Sessions Judge has already exercised revisional power under Section 397 of the CrPC.

15. The Hon'ble Apex Court, in the case of **Krishnan v. Krishnaveni : (1997) 4 SCC 241**, had observed as under:

“8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.”

16. It is relevant to note that the petitioner has invoked the inherent jurisdiction of this Court seeking quashing of the present FIR. While this Court needs to exercise restraint in stifling prosecution, however, the inherent jurisdiction can be exercised if it is found that the



continuance of criminal proceedings would be a clear abuse of process of law.

17. In the case of *State of Haryana v. Bhajan Lal : 1992 Supp (1) SCC 335*, this Court had illustrated the category of cases where the Court may exercise its inherent jurisdiction to quash the proceedings. The relevant portion of the judgment is reproduced hereunder:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no



prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) ***Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.***

(emphasis supplied)

18. The Hon'ble Apex Court in the case of ***Indian Oil Corporation v. NEPC India Limited and Others : (2006) 6 SCC 736*** has also discussed the scope of jurisdiction under Section 482 of the CrPC to quash criminal proceedings. The relevant portion of the same is reproduced hereunder:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd.



Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

(emphasis supplied)



19. As the petitioner has also challenged the order on charge in the present petition, it is also relevant to take note of the law in relation to framing of charges. It is trite law that the learned Trial Court while framing charges is not required to conduct a mini-trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are prima facie made out against the accused persons. All that is to be seen is whether the learned Trial Court has adequately appreciated the material on record and whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained.

20. The Hon'ble Apex Court, in the case of **Sajjan Kumar v. CBI : (2010) 9 SCC 368**, has culled out the following principles in regards to the scope of Sections 227 and 228 of the CrPC:

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The 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, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form



an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

(emphasis supplied)

21. In a recent decision in ***State of Gujarat v. Dilipsinh Kishorsinh Rao : 2023 SCC OnLine SC 1294***, the Hon'ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:

"7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and



such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

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12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”

(emphasis supplied)

22. It is the case of the petitioner that the subject FIR is manifestly frivolous and the same has been instituted by Respondent No.2 with the sole intention to harass him. It is argued that the allegations as made by Respondent No.2 in her statement under Section 164 of the CrPC, were not made by her in her initial complaint to the building authority or in the FIR.

23. Respondent No.2 has merely contested the same on the ground that the arguments raised by the petitioner are all a matter of trial.

24. The entire case is based essentially on the statement of Respondent No.2. While it is settled law that conviction can be based on the sole statement of a credible witness, however, the same must be



unblemished and should win the confidence of the Court. In such circumstances, before framing of charges, the Court is required to satisfy itself that the material placed on record by the prosecution, *prima facie*, inspires confidence so as to warrant subjecting the accused to trial.

25. The charge dated 14.07.2016 makes it clear that the offences as alleged against the petitioner relates to an incident that took place around 3-4 months before December, 2015, where the petitioner wrongly restrained Respondent No.2, assaulted her, used criminal force without any sudden or grave provocation and used abusive language with an intention to insult her modesty. The precise date of the incident is uncertain.

26. At this juncture, this Court first deems it apposite to refer to the complaint made by Respondent No.2 to the building authority on 26.10.2015, that is, more than a month before registration of the FIR. In the said complaint, Respondent No.2 elaborated upon an incident with another neighbour and also complained that the petitioner had threatened her, however, she made no mention of the alleged incident where the petitioner held her hand or obstructed her path. The relevant portion of the same is reproduced hereunder:

“1. I regret to inform you that few residents of the Fifth floor have been misbehaving with me on trivial issues on the premise that the terrace belongs to them and I have no right of passage therein....

2. I take a morning walk on the terrace often and resident of 352, Mr Aseem Saxena has threatened me with dire consequences if I walk on the section of the terrace which is above his flat 352. Mr. Aseem Saxena has kept several flower pots on the terrace and he



*alleged that my pet, a kitten is eating his plants. For over last two years I am walking on the terrace and no harm has been done by me or my pet. My pet is trained with a litter box of his own and I am not responsible for other cats or animals who may eat plants. **Mr Aseem Saxena has said that he has the right over the terrace and threatened me that he will harm me physically if I come up on terrace again.***

3. Today, on 26 October 2015 I had put 2 small stools and a wooden board on terrace of the Fourth Floor. Cleaning activity is ongoing in my floor and I had kept these small items in a small place covering hardly 3 foot x 2 foot area. Mrs Poonam Nene of Flat 452 came down in the lift and started throwing all items at my doorstep. She abused me and threatened me saying that the flat 452 belongs to her and I don't have the right to put anything on her terrace. I tried to request her saying that there are very-small dry items kept for a temporary period only but she continued throwing the items at me and on my doorstep threatening me at the same time.

4. The building terrace belongs to all residents and residents of the 5th Floor are using it for their own convenience and pleasure. They have misbehaved with me and continue to misbehave threatening me with dire consequences over trifling issues."

(emphasis supplied)

27. Respondent No.2 has made a mention of the aforementioned complaint in the FIR as well and stated that even though she gave a complaint, however, no action was taken in relation to the same. The relevant portion of the FIR in relation to the alleged incident is reproduced hereunder:

*"Around a few months back, Mr Asim Mowar's behavior deteriorated beyond my tolerance capacity. **He physically tried to obstruct my passage on the terrace and threatened me by saying that if he ever saw me or Cheeku again on the terrace he will inflict severe physical harm on both of us.** I was shocked by the exhibition of his crude behavior and violent nature. I was alone in the early hours of the morning around 6:30 AM on the terrace. He then lunged forward and beat Cheeku with a stick and tried to*



wring her neck. I tried to get back home safely, carrying a crying Cheeku and ran down the stairs. I had to provide medical attention to Cheeku and it took many weeks to calm down the pet. I tried to speak to the elders in the building complex and was advised not to file a police complain since it was thought that it would make matters worse. **On 26th October, 2015 I gave a written complaint to the Building Management, but there was no action.** ”

(emphasis supplied)

28. Thereafter, Respondent No.2 in her statement under Section 164 of the CrPC narrated the following version in relation to the incident.

The relevant portion of the same is reproduced hereunder:

“Around 3 months back, Mr Asim Mowar exhibited a very violent behavior over the same allegation that 'Chiku' was eating his plants. He threatened me and said that if he ever sees me or 'Chiku' on the terrace again he will kill us and he will inflict an injury that I shall remember it for the rest of my life, if I am left alive. While threatening me he first grabbed hold of me, pushed me violently due to which I fell on the stairs and all this while he was abusing me saying "Single ho, single ladkiyo ko main jaanta hu. Aisi ladkiyo ko main acchi tarah jaanta hu aur unhe sabak bhi sikhana jaanta hu. Tum jo apne ko ek smart Govt. Officer samajhti ho tumko main tumhaari aukat dikhaunga." Then he pulled out a stick from a flower pot and started hitting Chiku with it. I tried to protect Chiku, then he took hold of my hands and shoulders and physically obstructed my passage and gave me a big push due to which I fell against and hit the wall. I was in deep shock after this incident and refrained from going to the terrace area. I was also threatened by Mr. Asim Mowar that if I complained about him, then I who was a single lady living alone with elderly parents aged 78-84 years will face dire consequences.”

(emphasis supplied)

29. A bare reading of the complaint addressed by Respondent No.2 on 26.10.2015, the FIR and the statement of Respondent No.2 under Section 164 of the CrPC demonstrates that Respondent No.2 has substantially improved upon her allegations. Respondent No.2 has not



sought to offer any explanation for the same either. Even during the course of arguments before this Court, the sole argument taken on behalf of Respondent No.2 is that the arguments as raised by the petitioner are a matter of trial.

30. Initially, in her complaint to the Building Authority, the complainant merely alleged that the petitioner had threatened to physically harm her if she came on the terrace. Thereafter, in the FIR, Respondent No.2 alleged that the petitioner had physically tried to obstruct her passage to the terrace and threatened physical harm on her and her cat. Respondent No.2 also alleged that the petitioner had lunged at her cat.

31. However, in both the said complaint and the FIR, there is no whisper of the allegations that the petitioner held Respondent No.2's hand or pushed her violently on the stairs when he was threatening her. It is also not alleged initially that the petitioner had verbally abused Respondent No.2 with the intention to outrage her modesty.

32. It is only in her statement under Section 164 of the CrPC that Respondent No.2 made such allegations. It is stated in the FIR that Respondent No.2 had been advised by elders to not escalate the situation, however, no other person has been added as a witness to depose in relation to the allegations. It is also argued that the investigating agency erred in not examining any other witnesses in order to check the veracity of Respondent No.2's allegations and there is no CCTV footage or other corroborating evidence to substantiate the allegations made by Respondent No.2.



33. Charges have been framed against the petitioner for the offences under Sections 341/509/352 of the IPC.

34. The learned Trial Court, in impugned order on charge dated 14.07.2016, has observed that the allegations in the statement under Section 164 of the CrPC and the initial statement appear to be consistent and the believability of Respondent No.2 can only be ascertained after she is subjected to cross-examination.

35. The learned Revisional Court, in impugned order 31.07.2019, while upholding the order on charge dated 14.07.2016, has observed that while the accused can be given benefit of omission of facts, however, he cannot be given benefit for elaboration of facts. It is noted that merely because allegations are repeated in a different wording, the same will not be of benefit to the accused.

36. In the opinion of this Court, the present case is not one where the complainant has simply reiterated facts differently or elaborated upon them. The entire nature of the confrontation has been changed by Respondent No.2 in her different versions. As discussed above, no allegations in relation to any of the charged offences had been made by the complainant in her complaint to the Building Authority. In the FIR, in relation to the incident, Respondent No.2 only alleged that the petitioner had physically tried to obstruct her passage to the terrace. In such circumstances, considering that there is clearly some acrimony between the parties, the belated allegations in relation to verbal remarks made by the petitioner as well as alleged assault seem to be dubious, considering that no such allegations were made by



Respondent No.2 in her complaint to the Building Authority where she went on to extensively elaborate that another neighbour had abused and threatened her as she had kept some items on the terrace, or even the FIR, where she alleged that the petitioner had lunged on her cat and given it beatings.

37. The offence under Section 509 of the IPC relates to word, gesture or act that is intended to insult the modesty of a woman. It is relevant to note that merely insulting a woman is not sufficient to constitute the said offence and the insult has to be to the modesty of a woman. It is to be seen whether a reasonable man will think that the act was done with the intent or knowledge that the same is likely to outrage the modesty of a woman. While the remarks as alleged to have been made by the petitioner are in a bad taste, in the opinion of this Court, the contextual framework does not suggest that the heated remarks were made to affront or insult the modesty of Respondent No.2. The petitioner also made a remark in relation to Respondent No.2's occupation, whereby, it seems that the intent was rather to deter her from coming to terrace.

38. Insofar as the allegation in relation to obstruction of Respondent No.2's path to the terrace is concerned, it is argued that the said offence is not made out even if the allegations are taken at the highest. This Court finds no error in the reasoning of the learned Trial Court that by allegedly obstructing the path of Respondent No.2 to the terrace, in view of the definition of 'wrongful restraint' under Section



339 of the IPC, *prima facie*, the said offence is made out against the petitioner.

39. It is argued that the dispute essentially relates to a trifle dispute and the FIR ought to be quashed. To showcase the extent of the dispute between the parties, the petitioner has annexed certain complaints made by him against Respondent No.2 as well. A representation made by 70 female residents of the apartment condemning the acts of Respondent No.2 has also been annexed. The veracity of the said documents has not been disputed.

40. As discussed above, this Court is empowered to quash proceedings that are manifestly frivolous or vexatious in nature. such circumstances, where there is possibility of the proceedings being manifestly frivolous or vexatious or are instituted with the ulterior motive of wreaking vengeance, the Court is permitted to look into the facts and circumstances of the case a little more closely in exercise of inherent jurisdiction. The Court can look into the attending circumstances emerging from the record of the case and can read between the lines.

41. In the facts of the present case, it seems that the parties have been quarrelling with each other in relation to access to terrace. Admittedly, there was previous animosity between the parties. Section 95 of the IPC is meant to cover offences of trivial nature where even though the ingredients of the offence are made out, however, the offence and harm is so negligible in nature, that no ordinary person would ordinarily pursue action in relation to the same. Having



discussed that the statement of Respondent No.2 in relation to the assault as well as the verbal remarks seems dubious, even if the allegation in the FIR in relation to the petitioner obstructing Respondent No.2 is taken at the highest, the nature of offence appears to be slight and the same does not warrant continuation of criminal proceedings.

42. It is also relevant to note that even if the statement of Respondent No.2 is taken at the highest, in view of the facts of the case, the same only casts suspicion against the petitioner, however, it does not inspire such a grave suspicion so as to subject the petitioner to a trial specially when the allegations appear to be trivial. Parties are stated to be neighbours and such proceedings being allowed to continue would only cause more acrimony and disharmony.

43. In view of the aforesaid discussion, FIR No. 478/2015 and all consequential proceedings arising therefrom are quashed. Needless to say, the order on charge dated 14.07.2016 and order dated 31.07.2019 are also set aside.

44. The present petition is allowed in the aforesaid terms. Pending applications also stand disposed of.

AMIT MAHAJAN, J

JANUARY 27, 2025