

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45590 of 2018

Arising Out of PS. Case No.-483 Year-2016 Thana- GAYA COMPLAINT CASE District-
Gaya

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Syed Asdar Hussain @ S. A. Hussain son of Late Mazher Hussain @ Late
Amjhar Hussain, resident of Mohalla- Gewal Bisha, P.S.- Civil Line, P.O.-
Gaya, District- Gaya.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Saryu Prasad Gupta son of- Late Hari Saw, resident of Village- Akhara Par,
P.S.- Rampur, District- Gaya.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sumeet Kumar Singh, Adv. Mr. Anmol Kumar, Adv. Ms. Abhilasha Kumari, Adv.
For the Opposite Party/s :		Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL ORDER

12 20-07-2026 Heard learned counsel for the petitioner and learned

APP for the State. Even after valid service of notice, none
appears on behalf of O.P. No. 2, while by order dated
05.02.2026, on the basis of jointness petition filed by the
petitioner, service of notice upon O.P. No. 2 was accepted.

2. This application has been filed for quashing of
order dated 21.05.2018 passed by the learned C.J.M., Gaya, in
connection with Complaint Case No. 483 of 2016, registered for
the offences under Sections 323 and 504 of I.P.C.



3. As per the allegation, the complainant, Sarju Prasad Gupta (a retired Jail Press employee), filed a Complaint Case No. 483 of 2016 on 12.04.2016 before the learned C.J.M., Gaya, alleging that on 02.02.2016 at around 12.30 PM, while attending a case against his wife in the Family Court, Gaya, the accused S.A. Hussain, verbally abused and threatened him, demanding Rs. 40,000/- and threatened with severe facial injuries. When the complainant objected, the accused assaulted him with fists and slaps until bystanders intervened to save him, causing the complainant severe physical distress (spiked blood pressure requiring emergency medicine from a witness, Shiv Pujan Paswan) and mental trauma, after initial inaction by the Civil Line Police Station on his complaint submitted on 08.02.2016, the complainant approached the learned Court seeking judicial cognizance of the offences.

4. Learned counsel for the petitioner has submitted that the learned Magistrate had taken cognizance against the petitioner for the offences punishable under Sections 323 and 504 of I.P.C. in a mechanical manner without applying the judicial mind. Learned counsel for the petitioner has drawn the attention of this Court to the paragraph 10 of the complaint petition in which the complainant has stated that due to the act



committed by the petitioner, he had undergone mental and physical trauma and his condition became precarious and a written report about the alleged occurrence was submitted on 08.02.2016 before the Civil Lines police station, but since no steps were taken by the police, the complainant filed the present complaint. It has further been submitted that solemn affirmation was recorded in the present complaint, in which the complainant has himself admitted that regarding the alleged occurrence on his written application, Civil Lines Police Station P.S. Case No. 32 of 2016 was registered. It has, thus, been submitted that when the fact was within the knowledge of the learned Magistrate that for the occurrence, as narrated in the F.I.R., a substantive police case has been registered, then the learned Magistrate ought not to have proceeded further in the complaint and ought not to have examined the witnesses any further as inquiry witness under the provision of 202 Cr.P.C., called for a report from police and should have stayed the proceedings of the present case, but surprisingly, the learned Magistrate even after knowing this fact proceeded with the inquiry and took cognizance in the matter without waiting for final opinion after conclusion of investigation of Civil Lines P.S. Case No. 32 of 2016. Learned counsel for the petitioner has submitted that the



petitioner happens to be the conducting advocate of the wife of the complainant and the petitioner had been representing the wife of the complainant in judicial proceedings since 2012 itself, and had filed an application under Section 125 Cr.P.C. by a proper Vakalatnama. It has further been submitted that the statement of the complainant in the complaint as well as in his solemn affirmation are quite contradictory, and hence, the same does not inspire confidence. It has further been submitted that due to representation of the petitioner in favour of the wife of the complainant, the petition under Section 125 Cr.P.C. for maintenance was allowed in 2013 itself by the learned Principal Judge, Family Court, Gaya. It has further been submitted that upon inquiry by the petitioner that whether he is accused in Civil Lines P.S. Case No. 32 of 2016, it transpired that the case has not been registered against him. It has further been submitted that the present case against the petitioner is attended with malice, personal vendetta and to wreak vengeance against an advocate, who is representing his client against the complainant in a judicial proceeding. It has further been submitted that if the prosecution against the petitioner is allowed to continue, it would amount to gross miscarriage of justice against an advocate. It has further been submitted that for



a matrimonial dispute between the parties, a case against an advocate of the adversary party has been lodged and hence the prosecution against the petitioner is malicious.

5. Learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Mohd. Wajid and Another vs. State of Uttar Pradesh and Others**; reported in **2023 SCC OnLine SC 951** and has referred to paragraph 26 to 31 which are reproduced hereinbelow:

26. Section 504 reads thus:-

“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.”

27. Section 506 reads thus:-

“Section 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."

28. *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.

29. *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 self-control or having been subjected to abject terror by the offender.

30. *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.*

31. *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)

6. Learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **RAMESH CHANDRA VAISHYA vs. STATE OF UTTAR PRADESH AND ANOTHER;** reported in **2023 SCC**



OnLine SC 668 and has referred to paragraph 4,5 and 22 to 25 which are reproduced hereinbelow:

4. It is important to emphasize at this juncture that the appellant intended to lodge an F.I.R. arising out of the same incident. According to him, he was badly beaten up by the complainant and his son with canes and lathis on 14th January, 2016, as a result of which he too sustained injuries. On the same date, when the appellant approached the police station to lodge the F.I.R., it was not registered; instead, the appellant was challaned and kept under detention by the concerned inspector in-charge under sections 151, 107, and 116, Cr. PC. He was subsequently released upon furnishing bail bond. Owing to the failure of the Police to register the F.I.R., the appellant moved an application under section 156(3), Cr. PC. Pursuant to the order passed by the Magistrate, an F.I.R. dated 18th February, 2016 ("second F.I.R.", hereafter) was registered for the offences under sections 323, 325, 392, 452, 504, 506, IPC against the complainant (second respondent).

5. It is also noted that the appellant has instituted a suit³ before the civil court seeking permanent injunction against the complainant's continued encroachment upon the appellant's lands. The same is pending consideration before the competent



court.

22. Section 323, IPC prescribes punishment for voluntarily causing hurt. Hurt is defined in section 319, IPC as causing bodily pain, disease or infirmity to any person. The allegation in the first F.I.R. is that the appellant had beaten up the complainant for which he sustained multiple injuries. Although the complainant alleged that such incident was witnessed by many persons and that he sustained injuries on his hand, the charge-sheet does neither refer to any eye-witness other than the complainant's wife and son nor to any medical report. The nature of hurt suffered by the complainant in the process is neither reflected from the first F.I.R. nor the charge-sheet. On the contrary, the appellant had the injuries suffered by him treated immediately after the incident.

23. In the counter-affidavit filed by the first respondent (State) in the present proceeding, there is no material worthy of consideration in this behalf except a bald statement that the complainant sustained multiple injuries "in his hand and other body parts". If indeed the complainant's version were to be believed, the I.O. ought to have asked for a medical report to support the same. Completion of investigation within a day in a given case could be appreciated but in the present case it has resulted in more disservice than service to the cause of justice. The situation becomes all the more glaring



when in course of this proceeding the parties including the first respondent are unable to apprise us the outcome of the second F.I.R. In any event, we do not find any ring of truth in the prosecution case to allow the proceedings to continue vis-à-vis section 323, IPC.

24. What remains is section 504, IPC. In Fiona Shrikhande and Anr. vs. State of Maharashtra⁷, this Court had the occasion to hold that:

“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.”

25. Based on the facts and circumstances of the case, we have little hesitation in holding that even though the appellant might have abused the complainant but such abuse by itself and without anything more does not warrant subjecting the appellant to face a trial, particularly in the clear absence of the ingredient of intentional insult of such a degree that it could provoke a person to break public peace or commit any other offence.

7. Heard the parties and perused the record.

8. In the facts and circumstances of the case, this court is of the view that firstly, the Magistrate ought not to have proceeded when it was within his knowledge, that for the same occurrence, a substantive F.I.R. has already been lodged, rather the learned Magistrate ought to have asked from the police about the stage of the case and only after such report, he should have either proceeded or would have stayed the proceeding, which has not been done in this case. Moreover, the petitioner, being an advocate of his client, was contesting with respect to grievance of maintenance against her husband, i.e., present complainant, the prosecution should not continue against him as the same is attended with malice and personal vendetta. The petitioner and the inquiry witnesses have also failed to establish



a definite place of allegations leveled, the veracity of which is itself under cloud. Accordingly, the order taking cognizance dated 21.05.2018 is hereby quashed.

(Praveen Kumar, J)

Abdus/-

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