S. No. 25
Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CRM(M) No. 1056/2023
CrlM No. 2123/2023

Ram Avtar Khajuria **…Petitioner/Appellant(s)**

Through: Mr. A. P. Singh, Sr. Advocate with
M/s Diksha Handoo and Nikhil Verma, Advocates

Vs.

Union Territory of J&K And Anr. **...Respondent(s)**

Through: Mr. Sumeet Bhatia, GA for R-1
Mr. Suneel Kumar, Advocate for R-2

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
23.11.2026

1. The petitioner, being aggrieved of FIR No. 410/2023 dated 03.08.2023 and the consequent police report for the commission of offences punishable under Sections 323, 504 and 506 IPC, has called in question both the FIR and the final police report, primarily on the ground that the allegations contained in the impugned FIR, when read in conjunction with the statements recorded during the course of investigation, do not disclose the essential ingredients of the offences alleged against him. It is contended that neither the ingredients of criminal trespass nor those of criminal intimidation are made out and that the

continuation of the criminal proceedings against the petitioner would amount to an abuse of the process of law.

2. Initially, the allegations against the petitioner included the commission of an offence punishable under Section 452 IPC, which, upon investigation, was found not to have been established. According to the petitioner, the parties are cousin brothers and are embroiled in a civil dispute concerning ancestral property, with litigation pending before various Courts at Udhampur. It is alleged that the impugned FIR has been lodged with an ulterior motive to falsely implicate the petitioner in criminal proceedings. The petitioner has further contended that the allegations contained in the FIR, as also in the statement of respondent No. 2, are inherently improbable, having regard to his medical condition. The petitioner is stated to be a chronic cardiac patient with a pacemaker implanted, suffering from left femoral artery stenosis (mid-long segment) with claudication, and having undergone bypass grafting in January, 2023. He is stated to be under continuing medical treatment.

3. Learned counsel for the petitioner has vehemently argued that the material collected during the course of investigation does not disclose the commission of offences punishable under Sections 504 and 506 IPC. Placing reliance upon the judgment of the Hon'ble Supreme Court reported as ***AIR 2019 SC 2109***, learned counsel submits that the ratio laid down therein applies with full force to the facts of the present case, inasmuch as the allegations against the petitioner do not satisfy the essential ingredients of

either intentional insult of the nature contemplated under Section 504 IPC or criminal intimidation punishable under Section 506 IPC.

4. It has further been submitted, that once the offences punishable under Sections 504 and 506 IPC are found not to have been made out, the only offence that could, at best, be attributed to the petitioner is one punishable under Section 323 IPC, which is non-cognizable in nature. It is, accordingly, contended that further proceedings in respect of the said offence must conform to the statutory procedure prescribed for dealing with non-cognizable offences.

5. Per contra, learned counsel appearing for the respondents has submitted that the allegations levelled against the petitioner were duly investigated by the investigating agency. Though the FIR was initially registered for the commission of offences punishable under Sections 452, 323, 504 and 506 IPC, the investigation ultimately culminated in the presentation of a charge-sheet for offences punishable under Sections 323, 504 and 506 IPC. It is further contended that the petitioner has failed to demonstrate that the investigation was either tainted by mala fides or actuated by any oblique consideration so as to warrant interference by this Court in exercise of its inherent jurisdiction.

6. Heard learned counsel for the parties and perused the record.

7. Before adverting to the question as to whether the essential ingredients of the offences punishable under Sections 504 and 506 IPC are made out, it would be appropriate to briefly notice

the factual background in which the impugned FIR came to be registered and the consequent charge-sheet presented. As per the allegations contained in the FIR, on 25.07.2023, at about 8:30 PM, while respondent No. 2 was playing chess in a room of his residential house, the petitioner allegedly entered the room unlawfully, caught hold of respondent No. 2, subjected him to fist blows and dragged him to the ground. On hearing the hue and cry, the persons present there intervened and rescued respondent No. 2 from the clutches of the petitioner. It was further alleged that, but for their intervention, respondent No. 2 would have been killed. The petitioner was also alleged to have used defamatory and abusive language against respondent No. 2. It was on the basis of the aforesaid allegations that FIR No. 410/2023 for the commission of offences punishable under Sections 452, 323, 504, 506 and 34 IPC came to be registered and investigated.

8. Respondent No. 2 in his statement recorded under Section 161 Cr.P.C., stated that on 25.07.2023, at about 8:30 PM, while he was playing chess with his brother, the petitioner, namely, Ram Avtar Khajuria, who is closely related to him, came to his house, started abusing him and insisted upon the withdrawal of the case instituted by him in respect of ancestral land. In the meanwhile, one Raj Kumar brought tea and offered a cup thereof to the petitioner. When respondent No. 2 asked the petitioner to have tea, the latter allegedly threw away the tea, caught hold of respondent No. 2, assaulted him and subjected him to verbal abuse. It was further stated that the petitioner, after extending

threats, left the place of occurrence. Respondent No. 2, however, admitted that he had not subjected himself to any medico-legal examination.

9. Learned counsel for the petitioner has vehemently contended that although the entry of the petitioner into the house of respondent No. 2 was initially alleged to be unlawful, resulting in the registration of the FIR for an offence punishable under Section 452 IPC, the said allegation was not substantiated during the course of investigation. It is submitted that the petitioner, being closely related to respondent No. 2, had entered the latter's house with his permission. According to learned counsel, the incorporation of offences punishable under Sections 504 and 506 IPC was wholly unwarranted, as the statement of respondent No. 2, even if accepted in its entirety, would, at best, disclose an offence punishable under Section 323 IPC, notwithstanding the absence of any medico-legal examination. Learned counsel for the respondents, on the other hand, has submitted that respondent No. 2 was not only physically assaulted and brought to the ground but was also subjected to verbal abuse and threats.

10. The question that, therefore, falls for consideration before this Court is whether the allegations contained in the FIR and the material collected during the course of investigation, particularly when the offence punishable under Section 452 IPC has not been substantiated, disclose the essential ingredients of the offences punishable under Sections 504 and 506 IPC and, if not, what

would be the legal consequence insofar as the remaining offence punishable under Section 323 IPC is concerned.

11. A somewhat similar issue fell for consideration before the Hon'ble Supreme Court in the judgment reported as AIR 2019 SC 2109. In the said case, the allegations were that the appellant, accompanied by two other persons, one of whom was armed with a revolver, had visited the house of the complainant, abused him in filthy language and attempted to assault him, whereafter they fled from the place upon the arrival of certain neighbours. The Hon'ble Supreme Court, upon examining the statutory ingredients of Sections 504 and 506 IPC, found that the allegations did not disclose the commission of the said offences. For an offence punishable under Section 504 IPC to be made out, the following essential ingredients must exist:

    i. that there was an intentional insult;

    ii. that the insult was of such a nature as to give provocation to the person insulted; and

    iii. that the accused intended or knew it to be likely that such provocation would cause the person insulted to break the public peace or commit any other offence.

12. The mere fact that the accused used abusive or filthy language against the complainant would not, by itself, justify an inference that an offence punishable under Section 504 IPC has been committed, unless the requisite intention or knowledge contemplated under the provision is discernible from the allegations and the attending circumstances. Similarly, in order to

constitute an offence of criminal intimidation, as defined under Section 503 IPC and punishable under Section 506 IPC, there must be a threat of injury to the person, reputation or property of another, or to the person or reputation of anyone in whom that person is interested, coupled with an intention to cause alarm to such person or to cause him to do an act which he is not legally bound to do, or to omit to do an act which he is legally entitled to do, as a means of avoiding the execution of such threat.

13. Applying the aforesaid principles to the facts of the present case, it is evident that the allegation of house-trespass against the petitioner has not been substantiated during investigation. The material on record indicates that while respondent No. 2 was playing chess with his brother, the petitioner, who is closely related to him, came to his house, where some heated arguments ensued between the parties, culminating in the alleged verbal abuse and physical assault. The allegations are, therefore, required to be examined in the light of the specific statutory ingredients of the offences sought to be attributed to the petitioner, rather than merely on the basis of the penal provisions invoked by the investigating agency.

14. Admittedly, there is no medico-legal report on record to lend medical corroboration to the allegation of voluntary causing hurt. However, the absence of such medical evidence would not, by itself, be sufficient to negate the commission of an offence punishable under Section 323 IPC, if the other material on record otherwise discloses its essential ingredients. Even assuming, for

the purposes of the present proceedings, that the allegations disclose the commission of an offence punishable under Section 323 IPC, the question that still remains to be examined is whether the essential ingredients of Sections 504 and 506 IPC are independently made out.

15. Insofar as the allegation of criminal intimidation is concerned, the specific assertion of respondent No. 2 is that the petitioner questioned him regarding the institution of the civil suit and insisted upon its withdrawal. Though respondent No. 2 has also made a general allegation that the petitioner extended threats to him, neither the nature nor the particulars of such threats have been disclosed with sufficient specificity. The material collected during investigation does not disclose any specific threat of injury of the nature contemplated under Section 503 IPC, coupled with the requisite intention to cause alarm or to compel respondent No. 2 to withdraw the civil proceedings. A mere insistence upon the withdrawal of a civil suit, in the absence of a threat satisfying the statutory requirements of Section 503 IPC, would not, by itself, constitute criminal intimidation. Likewise, the allegation that the petitioner used abusive or filthy language, without any further material disclosing the requisite intention or knowledge that such insult would provoke respondent No. 2 to break the public peace or commit any other offence, would not attract the provisions of Section 504 IPC.

16. The incident, as emerging from the material collected during investigation, appears to have arisen out of a verbal altercation

between closely related persons, which allegedly culminated in a physical scuffle. The allegation of house-trespass, which formed the basis for invoking Section 452 IPC, has already been found unsubstantiated by the investigating agency. Thus, even if the allegations are accepted at their face value, the material on record would, at best, disclose an offence punishable under Section 323 IPC, which is non-cognizable in nature. The mere invocation of additional penal provisions in a police report, in the absence of material disclosing their essential ingredients, cannot justify the continuation of criminal proceedings in respect of such offences. The further course of proceedings concerning the surviving non-cognizable offence must, therefore, be regulated in accordance with the applicable statutory provisions governing investigation and cognizance of such offences. Viewed in the aforesaid background and having regard to the principles enunciated by the Hon'ble Supreme Court in ***State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335,*** this Court is of the considered view that the continuation of criminal proceedings against the petitioner for offences punishable under Sections 504 and 506 IPC, notwithstanding the absence of material disclosing their essential ingredients, would amount to an abuse of the process of law.

17. The existence of a civil dispute between the parties is not in controversy. It has also been submitted at the Bar that the petitioner had, on an earlier occasion, lodged an FIR against respondent No. 2. According to learned counsel for the petitioner,

the petitioner had visited the house of respondent No. 2 at the latter's invitation and, while the parties were having tea, a heated exchange took place between them, resulting in an alleged scuffle. Although the existence of a civil dispute between the parties would not, by itself, furnish a ground for quashing criminal proceedings where the allegations otherwise disclose the commission of a criminal offence, the said circumstance assumes relevance when examined in conjunction with the nature of the accusations and the absence of material satisfying the statutory ingredients of the offences alleged.

18. Having regard to the nature of the accusations and the material collected during the course of investigation, this Court finds that the allegations against the petitioner essentially relate to the use of abusive language and an alleged act of voluntary causing simple hurt. The material does not disclose the requisite ingredients of intentional insult punishable under Section 504 IPC or criminal intimidation punishable under Section 506 IPC.Even upon accepting the allegations at their face value and without entering upon an appreciation of the evidentiary worth of the statements recorded during investigation, the offence that may, at best, be disclosed against the petitioner is one punishable under Section 323 IPC.

19. For the foregoing reasons, the petition is ***partly allowed***. The impugned FIR No. 410/2023 dated 03.08.2023, the consequent charge-sheet and the proceedings emanating therefrom, insofar as they pertain to the offences punishable under Sections 504 and

506 IPC, are hereby quashed, being an abuse of the process of law. Since the offence punishable under Section 452 IPC has already been found unsubstantiated during the course of investigation, the only surviving allegation against the petitioner pertains to the offence punishable under Section 323 IPC.

20. It shall, however, remain open to the investigating agency to proceed in respect of the said offence strictly in accordance with law, subject to compliance with the applicable statutory requirements governing non-cognizable offences. The competent Magistrate shall consider the matter in accordance with law, uninfluenced by any observation made herein touching upon the merits of the surviving allegation.

(SANJAY PARIHAR)
JUDGE

JAMMU:
23.11.2026
Akhil Dev

Whether the order is speaking? Yes
Whether the order is reportable? Yes