

A.F.R.
Reserved

Court No. - 90

Case :- APPLICATION U/S 482 No. - 18245 of 2018

Applicant :- Dhirendra And 2 Ors

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Rakesh Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan,J.

1. Heard learned counsel for the applicants and learned AGA for the State.

2. The present application under section 482 of the Code of Criminal Procedure, 1973 is preferred challenging the summoning order dated 7.12.2016 passed by the Judicial Magistrate, Bhognipur, District – Kanpur Dehat, in Complaint Case No 877 of 2016 (Baburam Vs Dhirendra and others) under section 379, 504, 506 of Indian Penal Code at Police Station – Bhognipur, District - Kanpur Dehat (U.P.).

3. In the present case, the complainant-opposite party no.2 preferred a complaint against the applicants on 2.8.2016. A copy of the complaint is filed as annexure-2 to the application. The allegations as per above-mentioned complaint is that the complainant is a resident of Village-Gaurikaran, Police Station –Bhognipur, District–Kanpur Dehat. It is further alleged that on 21.5.2016 complainant had tied up his goat just outside his house and went out of village at about 8 AM. When the complainant came back to the village on the same day at 12 o'clock and reached his house, he found that his goat was missing. When complainant started searching for his goat then

he was informed by neighbours, namely, Kaloo, Ram Singh and other persons that goat of opposite party no. 2 has been taken by the applicants by way of theft. It is further alleged in the complaint that complainant thereafter along with his brother Umlesh went to the house of the applicant no.1–Dhirendra. Where complainant found that his goat was in the house of the accused persons-applicants. Further, it is alleged that when complainant confronted accused-persons with aforesaid act they started abusing and stated to the complainant to go away from his house and in future if he comes to the house again for taking the goat he would be killed. As per the complainant he had made complaint to the police however no action was taken nor his report was lodged thereafter on 23.7.2016 a letter was also sent to the Superintendent of Police and when no action was taken the present complaint was filed.

4. In aforesaid complaint case, the court concerned proceeded and have recorded the statement of complainant under Section 200 of Code of Criminal Procedure, 1973. A copy of the statement of the complainant is annexed as Annexure-3 to the petition. The complainant Babu Ram has supported the complaint and has stated that the incident took place on 21.5.2016 when he was out of the village and when he came back his goat was not in the house where he had left. On search being made, it was informed by Ram Singh, Munna Singh, Kaloo and others that the applicants have taken away the goat of the complainant. The complainant has further stated that when he reached the house of the applicants along with his brother and confronted the accused persons they threatened and asked him to leave the place. Thereafter

accused-persons have assaulted complainant and his brother and have abused. He has further stated that he went to police station and had given a complaint, however, no action was taken and only police official came to the spot. On 23.5.2016, a complaint was also sent to Superintendent of Police, however, no action was taken.

5. In support of complaint, the complainant has also examined one Kamlesh son of Shri Munnulal, who has stated that he is acquainted with the complainant and the applicants. They are resident of the same village. He has further stated that applicants have taken away goat of complainant, who is his brother. The aforesaid incident is seen by Kallu, Ram Singh and Munna. He has further stated that when his brother-complainant came back at about 12 o'clock and started looking for his goat then he came to know that the applicants have taken away goat of complainant. He has further stated that he went along with his brother to the house of applicants and found that the goat of the complainant was in the house of the applicants and when the applicants were confronted then they started abusing and threatened for life. The said witness has also stated in the statement that complainant had made a complaint to the police station on the same day.

6. The complainant has further examined before the court concerned one Ram Singh, who has stated that he knows the complainant as well as the applicants-accused persons. The complainant and accused-persons are resident of same village where Ram Singh is also residing. He has further stated that the incident is of 21.5.2016 in the afternoon when the

complainant Babu Ram had tied up his goat in his land adjoining his house and went out of village and in his absence the applicants-Dhirendra, Mithlesh or Achlendra had stolen away the goat of the complainant-opposite party no 2. He has further stated that the aforesaid incident was seen by him and one Munna.

7. The complainant has further examined one Munna who has stated that the occurrence is of 21.5.2016 in the afternoon. The complainant had tied up his goat adjoining to his house and left. The goat was taken away by applicants namely Dheerendra, Achlendra and Mithlesh by way of theft in the absence of complainant. He has further stated that aforesaid incident was seen by him and Ram Singh and other villagers and informed to complainant. He has further stated that complainant in search of his goat went to house of applicants where he found his goat and when applicants were asked to release the goat they have abused and threatened.

8. In pursuance to the above mentioned statement recorded under Sections 200 and 202 of the Code of Criminal Procedure, 1973, the Judicial Magistrate, Bhognipur, Kanpur Dehat has passed impugned order dated 7.12.2016 summoning the applicants under Sections 379, 504 and 506 of the Indian Penal Code.

9. It is submitted by learned counsel for the applicant that the summoning order has been passed on the basis of a complaint filed by the opposite party no.2. As per the complaint case, it is alleged that the goat of the complainant which was tied up near the house was taken away in the absence of the

complainant. As per the complaint, Kallu, Ram Singh and other persons have informed that the applicants have taken away the goat of the complainant. Subsequently, when the complainant went to the house of the applicant, the goat was found and thereafter, they have started abusing and have threatened.

10. Learned counsel for the applicant submits that in the present case no offence under Section 379 I.P.C. is made out against the applicants as there is no recovery of the goat. Further, the ingredients of dishonestly removing from the possession is not found from the evidence on record.

11. Learned counsel for the applicant further submits that no offence under Sections 504 and 506 I.P.C. is made out against the applicants.

12. Learned AGA has opposed the application preferred by the applicants. It is submitted by learned AGA that the offence under Sections 379, 504 and 506 of Indian Penal Code is made out against applicants. It is further submitted that present application preferred by applicants is devoid of merit and as such is liable to be dismissed.

13. In **R.P. Kapur v. State of Punjab, AIR 1960 SC 866**, the Hon'ble Apex Court had summarised some of the categories of cases where the inherent power under section 482 of the Code of Criminal Procedure could be exercised by the High Court to quash criminal proceedings against the accused. These are:- "(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction; (ii) where the allegations in the first information

report or the complaint taken at their face value and accepted in their entirety do not constitute the offence alleged; (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

14. In **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426** the Hon'ble Apex Court has held as follows:-

"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."

15. In **State of Telangana v. Habib Abdullah Jeelani, (2017) 2 SCC 779 : (2017) 2 SCC (Cri) 142 : 2017 SCC OnLine SC 23**, the Hon'ble Apex Court has held that inherent power in a matter of quashing of FIR has to be exercised sparingly and with caution and only when such exercise is justified by the test specifically laid down in the provision itself. There is no denial of the fact that the power under Section 482 CrPC is very wide but it needs no special emphasis to state that conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court. Whereas while exercising power under Section 482 CrPC

the Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the Court to give effect to any order under CrPC, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 CrPC should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the Court under Section 482 CrPC to quash the very issue of process, the Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred.

16. The power under section 482 Cr.P.C. is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse

of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

17. While exercising powers under section 482 Cr.P.C. the Court does not function as court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the test specifically laid down in section itself and the catena of decisions of Hon'ble apex court. The powers possessed by the Court under Section 482 Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. The inherent power should not be exercised to stifle a legitimate prosecution. Court must be careful to see that its decision in exercise of this power is based on sound principles. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material, of course, no hard-and-fast rule can be laid down with regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for this Court to analyze the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premise arrived at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding

instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the Court to quash the same in exercise of the inherent powers under Section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the court and at that stage, it is not possible for the court to sift the materials or to weigh the materials and then come to the conclusion one way or the other.

18. There cannot be a general proposition of law, so as to fit in as a straitjacket formula for the exercise of such power. Each case will have to be judged on its own merit and the facts warranting exercise of such power.

19. In the present case the applicants have been summoned under section 379 of the Indian penal code. Section 379 of the Indian penal code prescribes punishment for theft. The theft has been defined under section 378 of the Indian penal code. The provisions of section 378 of the Indian penal code is quoted hereinbelow :

“378. Theft.—Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being movable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied. “

20. A theft is said to have been committed when a person intending to take dishonestly any movable property out of the possession of any person without the persons consent, moves the property in order to take such property. The essential ingredients for an offence under section 379 of the Indian penal code are as under :

- a) dishonest intention to take property
- b) the property must be movable

- c) the property should be taken out of the possession of another person
- d) the property should have been taken without the consent of that person
- e) there must be moving of the property in order to accomplish the taking.

21. The allegations in complaint are that complainant had tied up his goat adjoining to the house in the open and went out of the village. In the afternoon when he came back he found his goat missing. The villagers including Ram Singh and Munna had informed that applicants had taken away his goat while he was out of the village. The complainant went to the house of applicants and found the goat tied up in the house of applicants and when the complainant demanded the same, the accused persons started abusing and threatening. The complainant has examined himself in support of the allegations before the court below under section 200 of the Code of Criminal Procedure and further three witnesses were examined by the complainant in support of the allegations. All the witnesses have supported the complainant's case.

22. The goat, in question, is undisputedly movable property belonging to the complainant. As per statement of the complainant, as well as, the eyewitnesses being Ram Singh and Munna, applicants were seen taking away the goat from the house of the complainant, as such the movable property, as per the allegations, was taken away by the applicants from the house of the complainant. It is not the case of the applicants that the aforesaid goat was moved by the applicants with the

consent or knowledge of the complainant. A perusal of the complaint would demonstrate that the goat in question was taken away by the applicants without the consent of the complainant. The allegation of theft was also made by the complainant against applicants. It is further to be noted that when the complainant reached the house of the applicants the goat of the complainant was found to be tied up in house of applicants and as such, as per allegations, the goat – movable property was moved from the house of the complainant to the house of the applicants in order to accomplish the taking of the property.

23. As per allegations of complainant, goat in question was taken away by the applicants without his knowledge or consent and constituted a theft. The intention to take dishonestly exist when the taker intends to cause wrongful gain to one person or wrongful loss to another person. It is not the case of applicants that applicants are claiming any right, title or interest in the goat in question. As per complaint, allegations which are supported by the statement of the witnesses, the goat in question was found tied up in the house of the applicants. It is not the case of applicants that goat in question belongs to them. As per complainant's allegation the goat in question was taken away by the applicants from the house of the complainant and was tied up in the house of the applicants. Once the property in question belongs to the complainant as per the allegations of complaint and the same was moved by applicants when the complainant was not at his house and was taken away, it cannot be denied that the intention to remove the goat was dishonest. In this respect

attention has also drawn to the illustrations provided under section 378 of the Indian penal code

24. Illustration in Section 378 of the Indian Penal Code :-

(b) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

25. It is further to be noted that the illustration (a) of section 114 of the Indian Evidence Act provides that the Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. In the present case the applicants have not accounted for the possession of the goat in question. The question whether the goat was actually removed and the dispute with regard to the statement of the witnesses cannot be gone into in exercise of the powers under section 482 Cr.P.C. and said is a subject matter of trial. While deciding the present application in exercise of the powers under section 482 Cr.P.C. the court is enjoined with the duty to take the allegations in the complaint and the statements on the face of it and considering the same to be correct, the court is to look into whether any offences is made out even if the allegations are treated to be correct.

26. It is further to be noted that the complainant alleged the removal of the goat in question from his house by the applicants and subsequently the goat in question was found to be tied up in the house of the applicants. No explanation has offered by the applicants nor any claim of any right, title or interest in the goat in question has been claimed in the present application. On the face of the allegations the removal of the goat without the consent of the complainant is with dishonest intention and no explanation has been offered by the applicants with regard to any bonafide claim, right or interest in the goat in question. Under the circumstances prima facie the offence under section 379 IPC is made out against the applicants.

27. The applicants have also been summoned under Sections 504 and 506 of Indian Penal Code. The applicants have put to challenge the summoning under the aforesaid sections on the ground that no offence is made out. The offence of criminal intimidation is prescribed under Section 503 of the Indian Penal Code and the same is quoted hereinbelow :-

“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.”

28. An act of criminal intimidation would occur when a person 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 harm 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. In the present case, as per allegations in the complaint, applicants are said to have abused the complainant and threatened that in the event, complainant comes back he would be killed. As per statement of complainant under Section 200 of the Code of Criminal Procedure, the only allegation against the applicants that they have abused the complainant and asked the complainant to run away. The statement of Kamlesh was recorded under Section 202 of the Code of Criminal Procedure where the aforesaid witness has stated that applicants have abused and threatened for life. It is on the aforesaid basis that the summoning order under Section 506 IPC has been made against applicants in the present case although there are allegation of threatening in the complaint. As per Section 503 of the Indian Penal Code, the threatening with any injury to a person should be with intent to cause alarm to that person. As per the complaint, it is alleged that applicants have threatened that if the complainant come back again to take the goat then he would be killed. The aforesaid threat by the applicants certainly would cause alarm to the victim and the same was given by the applicants with the intent to alarm the complainant not to come back to the house of the applicants.

The question of sufficiency of evidence is to be looked upon by the trial court and at this stage only allegations stated in the complaint are required to be examined treating them to be correct. In view of the allegations in the complaint, case under Section 506 of the Indian Penal Code is set to be prima facie made out against the applicants.

29. Insofar as the case against the applicant under Section 504 of the Indian Penal Code is concerned, it is to be seen that Section 504 IPC reads as under :-

“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.”

30. It is to be noted that Section 504 of the Indian Penal Code provides that 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 then the aforesaid offence come within the meaning of intentional insult with the intent to provoke breach of peace. It is to be seen that in the present case, as per complaint, the only allegations are that abusive language was used by the applicants, however, the nature of abusive language has neither been elaborated in the complaint nor in the statements of witnesses. The Supreme Court in **Mohammad Wajid and another Vs State of U.P. in Criminal**

Appeal No 2340 of 2023 decided on 8.8.2023 has observed that:-

“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. 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. The complainant in his complaint has not stated the nature of abusive language used by the applicants. The allegations in the complaint in this respect are wholly vague in nature. It has not been stated in the complaint that the abusive language

used by the applicants was of such nature as would have in ordinary course of events let person insulted to the break the peace or commit an offence under the law. Mere use of abusive language or being discourteous to the opponent or rude would not by itself amount to any intention insult within the meaning of Section 504 of the Indian Penal Code. It has to be shown that the nature of abusive language or insult is such as is likely to insult a person or to commit breach of peace or commit an offence. In the facts and circumstances of the case where the complainant has not disclosed the nature of abusive language used by applicants & general and vague allegations with regard to the language has been made in the complaint without specification then it cannot be said that the provisions of Section 504 of the Indian Penal Code is attracted in the facts and circumstances of the case. The court concerned has incorrectly summoned the accused – applicants under Section 504 of the Indian Penal Code.

32. In view of discussions made herein above, the summoning order dated 7.12.2016 passed by the Judicial Magistrate, Bhognipur, District - Kanpur Dehat in Complaint Case No. 877 of 2016 (Baburam Vs Dhirendra and others) insofar the said order issues summon under Section 504 of the Indian Penal Code against applicants is set aside. The above-mentioned summoning order dated 7.12.2016 to the extent it issue summons to the applicant under Sections 379 and 506 of the Indian Penal Code is upheld. The court concerned is directed to proceed with the case under Sections 379 and 506 of the Indian Penal Code in accordance with law.

33. The present application under Section 482 Cr.P.C. filed by the applicants is **partly allowed** and the court concerned is permitted to proceed with the summoning order dated 7.12.2016 in respect of offence under Sections 379 and 506 of the Indian Penal Code and not to proceed in respect of offence under Section 504 of the Indian Penal Code against the applicants.

Order Date :- 06.02.2024

Bhaskar