



SHARANAGOUDA

...RESPONDENTS

(BY SRI SHARANABASAPPA M. PATIL, H.C.G.P., FOR R-1, &  
SRI SANTOSH H. PATIL, ADVOCATE, FOR R-2)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ORDER OF TAKING COGNIZANCE AND ORDER OF ISSUE OF PROCESS DATED 13.10.2020 PASSED BY THE J.M.F.C. COURT, DEVADURGA, IN CRIMINAL CASE NO.492/2020 (ARISING OUT OF GABBUR POLICE STATION CRIME NO.62/2020) FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 448, 504 AND 506 READ WITH SECTION 34 OF IPC.

THIS CRIMINAL PETITION IS COMING ON FOR FINAL HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

This petition is filed by accused Nos.1 to 3 under Section 482 of the Code of Criminal Procedure, 1973, (for short, 'Cr.P.C') for quashing the order dated 13-10-2020 passed by the Judicial Magistrate First Class Court, Devadurga, in Criminal Case No.492 of 2020 (arising out of Crime No.62 of 2020 of Gabbur Police Station) for the offences punishable under Sections 448, 504 and 506 read



with Section 34 of the Indian Penal Code, 1860, (for short, 'IPC').

2. Heard the arguments of the learned counsel for the petitioners, learned High Court Government Pleader for respondent No.1-State and the learned counsel for respondent No.2-complainant.

3. The petitioners are arraigned as accused Nos.1 to 3 as per the F.I.R. and the charge-sheet. On the strength of the complaint filed by respondent No.2, the Investigating Officer conducted investigation and after completion of the investigation, he submitted charge-sheet against accused Nos.1 to 3 for the aforesaid offences. Thus, jurisdictional J.M.F.C. took cognizance of the complaint under Section 190(1)(a) of the Cr.P.C. in Criminal Case No.492 of 2020 and issued process against accused Nos.1 to 3 to face the trial for the aforesaid offences. Taking exception to the same, these petitioners have filed this petition under Section 482 of the Cr.P.C.



praying to quash the entire proceedings pending before the trial Court.

4. Learned counsel for the petitioners has contended that respondent No.2 has filed a false case against them and it is purely civil in nature. The order of taking cognizance and issue of process against the petitioners is against the facts and material placed on record and same deserves to be quashed. Further, the order of taking cognizance and issue of process against the petitioners is against the settled proposition of law and criminal jurisprudence and the learned Magistrate has issued process against the petitioners without application of mind. It is contended that, on perusal of the entire charge-sheet material, the alleged offences punishable under Sections 448, 504 and 506 read with Section 34 of the IPC are not made out; the present criminal case has been initiated in order to cause undue harassment to the petitioners, as the civil Court granted temporary injunction in their favour in Original Suit No.32 of 2018 dated



30-11-2019. Thus, the present criminal proceedings clearly an offshoot of civil suit filed with an intention of exerting undue pressure upon the petitioners to give up their claim in the said suit. Hence, taking cognizance and issue of process by the learned Magistrate is without any substance.

5. Learned counsel for respondent No.2 would submits that the charge-sheet material clearly discloses the commission of aforesaid offences and the veracity of allegation against the petitioners would be considered only after a full fledged trial and at this stage, the cognizance taken by the learned Magistrate does not warrant any interference.

6. Learned High Court Government Pleader for respondent No.1 reiterates the submissions made by the learned counsel for respondent No.2.

7. A perusal of the material on record goes to show that the alleged incident took place on 12-5-2020 at about



2:00 p.m. and the F.I.R. was lodged on 22-5-2020, without offering any possible explanation. The Hon'ble Supreme Court in the case of **STATE OF ANDHRA PRADESH v. MADHUSUDHAN RAO** reported in **(2008) 15 SCC 582** at paragraph No.30 held as under:

*"30. Time and again, the object and importance of prompt lodging of the first information report has been highlighted. Delay in lodging the first information report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained."*

Admittedly, respondent No.2 made allegation that on the relevant date, time and place, the petitioners



trespassed to his house, but on perusal of the material available on record, in Original Suit No.32 of 2018, the learned Magistrate, Devadurga, granted interim relief in favour of the petitioners and therefore, by virtue of the order, they entered the premises and therefore, at this juncture, *prima-facie*, there is no merit in the contention of the complainant that the petitioners have trespassed into his house. Thus, the term 'house tress-pass' as defined under Section 442 of the IPC, which is punishable under Section 448 of the IPC is not attracted.

8. The Hon'ble Apex Court in the case of ***FIONA SHRIKHANDE v. STATE OF MAHARASTRA AND ANOTHER*** reported in ***(2013) 14 SCC 44*** at paragraph Nos.13 and 14 held as under:

*"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.*

*14. We may also indicate that it is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504 IPC. It is not the law that a complainant*



*should verbatim reproduce each word or words capable of provoking the other person to commit any other offence. The background facts, circumstances, the occasion, the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504 IPC."*

Further, respondent No.2 made allegation that on the relevant date and time, the petitioners intentionally insulted him to provoke his breach of peace, but on perusal of the charge-sheet at column No.17, the Investigating Officer has not stated about the ingredients of Section 504 of the IPC. Therefore, in the case on hand, ingredients of Section 504 of the IPC are not made out.

9. In the complaint, respondent No.2 has taken the contention that on the relevant date, time and place, the petitioners made criminal intimidation to eliminate him,



but on perusal of the charge-sheet material, the clear term used by respondent No.2 is that accused No.1 lifted hoe (*guddali*) and thrown on the ground.

10. On perusal of the above provisions, it is clear that in order to satisfy the ingredients of criminal intimidation, there has to be a threat of injury to person, reputation or property of the complainant by the accused, which should be with an intention to cause alarm to that person or cause that person to do any act which he is not legally bound to do, or to omit to do so as to avoid the execution of such threat.

11. In case of **MANIK TANEJA AND ANOTHER v. STATE OF KARNATAKA AND ANOTHER** reported in **(2015) PART 7 SCC 423**, the Hon'ble Supreme Court had an occasion to examine the ingredients of Section 503 and 506 of the IPC.

*"11. Section 506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal*



*intimidation” as defined in Section 503 IPC is as under:*

*“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.”*

*A reading of the definition of “criminal intimidation” would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally*



*bound to do or omit to do an act which he is legally entitled to do."*

From the foregoing proposition of law, it is clear that in order to constitute offence of criminal intimidation, there must be threat with intention to cause alarm to the complainant or to do any act which is not legally bound to do. Mere expression of any words without any intention to cause alarm to the complainant or to make him to do, or omit to do any act, is not sufficient to bring the act within the definition of criminal intimidation. Therefore, in the instant case, even ingredients of Section 506 of the IPC are not made out against the petitioners.

12. In view of the preceding analysis, I am of the view that F.I.R. was lodged by respondent No.2 without any probable cause and with nullius. Further, the complaint is clearly civil in nature and in order to offshoot from civil suit, the complaint has been lodged. Hence, the continuation of the criminal proceedings against the



petitioners is nothing but abuse of due process of law and is liable to be quashed.

13. Accordingly, the petition is ***allowed***. The order dated 13-10-2020 passed by the Judicial Magistrate First Class Court, Devadurga, in Criminal Case No.492 of 2020 (arising out of Crime No.62 of 2020 of Gabbur Police Station) for the offences punishable under Sections 448, 504 and 506 read with Section 34 of the Indian Penal, 1860, is hereby quashed.

In view of the disposal of the petition, pending interlocutory applications, if any, do not survive and accordingly, they are dismissed.

**Sd/-**  
**JUDGE**

KVK  
List No.: 1 SI No.: 44