

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

M.Cr.C.No.19835 of 2017

BETWEEN:-

**PRAFULLA KUMAR JAISWAL, AGED
ABOUT 44 YEARS, S/O SHRI RAJENDRA
PRASAD JAISWAL, R/O DUDHI NAGAR,
DISTRICT SONBHADRA (UTTAR
PRADESH)**

.....APPLICANT

(BY SHRI AJAY KUMAR OJHA – ADVOCATE)

AND

**1. THE STATE OF MADHYA PRADESH
THROUGH STATION HOUSE OFFICER
POLICE STATION UCHCHERA, DISTRICT
SATNA (MADHYA PRADESH)**

**2. KAILASH TAMRAKAR S/O JAMUNA
PRASAD TAMRAKAR, AGED ABOUT 45
YEARS, UCHCHERA, POLICE STATION
UCHCHERA, DISTRICT SATNA
(MADHYA PRADESH)**

...RESPONDENTS

***(BY SHRI S.M. PATEL – PANEL LAWYER FOR RESPONDENT NO.1/
STATE) (NONE FOR RESPONDENT NO.2)***

.....
Reserved on : 06.09.2023

Pronounced on : 22.09.2023
.....

This petition having been heard and reserved for order, coming on for pronouncement this day, the Court pronounced the following:

ORDER

The present petition under Section 482 of Cr.P.C has been filed for quashment of the FIR No.111/2015 dated 08.05.2015 registered at Police Station Unchehara, District Satna and Criminal Case No.400/2015 (State of M.P. Vs. Prafulla Kumar Jaiswal) arising out of the said FIR for commission of offence under Section 294 and 506 of IPC.

2. The factual matrix of the prosecution case, in short is that one Kailash Tamrakar and Roop Kumar Harbol submitted a joint application in writing before the Police alleging that they are the Journalists of Patrika Newspaper and Madhya Pradesh Jan Sandesh Newspaper. It was alleged that they conceding the request made by Amar Singh Yadav, Mohd. Ibran and Neeru Tiwari had gone to village Bihta for the coverage of a matter. At the time of coverage of the matter when they were having discussion with Amar Singh Yadav and his wife, Power Grid's employee Prafulla Jaiswal on the basis of instigation by an employee named Subhash Chandra came and abused them. They also threatened to damage the camera. They were attempting to manhandle them. They

were rescued by the villagers and farmers and due to them only they could leave the village safely.

3. On the basis of aforementioned written complaint filed on 09.04.2015, after one month, i.e. on 08.05.2015, an FIR was registered for offences punishable under Section 294 and 506- Part-II of IPC. After completion of investigation, charge sheet was filed for commission of offence under Section 294 and 506 of IPC before JMFC Unchehara.

4. It is submitted by learned counsel for the petitioner that a false and manufactured complaint was made against the petitioner. In written complaint and FIR, no specific allegations regarding commission of offence under Section 294 and 506 of IPC have been made. The allegations leveled in the FIR are omnibus and general in nature, and even if the entire allegations are taken in its entirety, even then the necessary ingredients for offence under Section 294 and 506 of IPC are clearly missing. It is submitted that applicant is an employee of Power Grid Corporation Limited, which deals with the business of transmission of electricity in India and various other parts of the world. The applicant along with other officers of the corporation were working for completion of the project on war footing basis. They were trying their best to complete their work. The complainant along with others were causing obstructions in the ongoing work of the public importance and were pressurizing the applicant but when they did not succumb to their pressure, a false, fabricated and manufactured complaint was maliciously made.

5. It is contended that learned Judicial Magistrate First Class without examining the allegations made and taking into consideration that necessary ingredients for offences under Section 294 and 506 of IPC are missing, framed charges against him for commission of offence punishable under Section 294 and 506-II of IPC, which is improper. Thus, he has prayed for quashment of the FIR and charge sheet.

6. On the other hand, learned Panel Lawyer for the State has contended that the plea taken by the petitioner relating to his false implication cannot be taken into account at this stage and same can be taken care of by learned trial Court at the appropriate stage. He contended that after investigation, charge sheet has been filed and charges have been framed for commission of offence under Section 294 and 506-II of IPC. It is contended that use of obscene language and derogatory mark were not the part and parcel of the official duty and therefore, trial Court was justified in framing the charges. He submitted that the contents of the FIR are corroborated by the statements of the witnesses recorded during investigation making out the basic ingredients of the offence and there was no illegality in proceeding with the criminal case. Therefore, the petition filed by the petitioner should be dismissed.

7. I have heard learned counsel for the parties and perused the material on record.

8. Hon'ble Apex Court in the case of *State of Karnataka Vs. L.Muniswamy and Others*, reported in (1977) 2 SCC 699 has held that the High Court is entitled to quash a proceeding if it comes to the

conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice requires that the proceedings ought to be quashed. In para 7, the Hon'ble Supreme Court had held as under:

“7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

9. Similarly, a three-Judge Bench of Hon'ble Apex Court in the matter of *State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89*, had the occasion to consider ambit as well as scope of Section 482 Cr.P.C. By analyzing the scope of Section 482 Cr.P.C. the Hon'ble Apex Court has laid down that 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 abuse. It was further held that High 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. The following law has been laid down in para 6 by the Hon'ble Apex Court as under:-

“6. ... All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a 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 tests specifically laid down in the section itself. It 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 abuse. It would be an abuse of 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/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.” Further, in para 8 following law has been laid down by the Hon'ble Supreme Court as under:-

“8. ... Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal.”

10. Hon'ble Apex Court in the case of *State of Haryana and Others Vs. Bhajanlal*, reported in (1992) Suppl (1) SCC 335 has held as under:

“108. 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 channelized 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."*

11. Before dwelling with the matter, it would be apposite to reproduce the contents of the FIR and application dated 09.04.2015 submitted by the complainants before Police.

“प्रति,

श्रीमान् थाना प्रभारी महोदय

थाना उचेहरा जि. सतना (म.प्र.)

विषय:- पावर ग्रिड के कर्मचारी प्रफुल जैसवाल, सुभाष चन्द्र एवं इनके गुर्गी के खिलाफ कार्यवाही एवं हम पत्रकारों की रक्षा किये जाने बाबत्।

मान्यवर,

मैं कैलाश ताम्रकार पिता स्व. जमुना प्रसाद ताम्रकार पत्रिका समाचार पत्र का सम्वाददाता हूँ एवं रूप कुमार हरबोल पिता स्व. श्री सुन्दर हरबोल म०प्र० जन संदेश के सम्वाददाता हैं। महोदय हम लोग बिहटा गाँव के एडवोकेट कमलेन्द्र सिंह, अमर सिंह पिता रामाश्रय सिंह एवं मो० इब्रार व नीरू तिवारी नामक पीड़ित किसानों के बुलावें पर समाचार कवरेज करने गए थे। कवरेज करने के दरम्यान हम लोग अमर सिंह एवं उनकी पत्नी से समस्या के संबंध में जानकारी ले रहे थे। तभी पावर ग्रिड के कर्मचारी प्रफुल जैसवाल एवं जानकारी अनुसार सुभाषचन्द्र नामक कर्मचारी के इसारे पर उनके गुर्गे हम दोनों के साथ मार पीट पर अमादा हो गाली गलौज करने लगे व कैमरा तोड़ने की धमकी देने लगे गाँव के ही कुछ लोगों एवं पीड़ित किसानों ने हमारी रक्षा की तब कही हम सुरक्षित चक्कन हार बिहटा से निकल सकें।

अतः आप से अनुरोध है कि कम्पनी के कर्मचारियों एवं उनके गुर्गों के ऊपर सख्त वैधानिक कार्यवाही करने की कृपा करें जिससे किसानों को न्याय मिलने के साथ पावर ग्रिड के कर्मचारी ऐसी हरकत न कर सकें।

12. Learned counsel for the petitioner submitted that even if the entire recitals of FIR, complaint made in writing and the statement of witnesses recorded under Section 161 of Cr.P.C are taken as true, even then no offence under Section 294 or 506-II of IPC will be made out as the necessary ingredients for such offence are completely missing.

13. On a perusal of the complaint and statement of witnesses, it is apparent the entire allegations against the applicant is that on the basis of exhortation by one Subhash Chandra, Praful Jaiswal and others had intention to cause voluntarily hurt and had abused them and had also extended threat to damage the camera. Thus, a look of the complaint makes it clear that applicant and others abused and were having intention to cause voluntary hurt and had also threatened to damage the camera. Section 294 of IPC talks about the obscene acts and songs. Section 294 of IPC reads as under:

“294. Obscene acts and songs – Whoever, to the annoyance of others -

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene songs, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.”

14. The essential ingredients for an offence under Section 294 of IPC are:

(i) An obscene act must have been done in a public place.

(ii) The act of song or ballad or words were obscene.

(iii) The acts done by the accused causing annoyance to others.

15. In his statement recorded under Section 161 of Cr.P.C, Kailash Tamrakar stated that “प्रफुल कुमार गन्दी गन्दी गाली गलोच करने लगा” and Roop Kumar Harbol stated that “प्रफुल कुमार अभद्रता एवं गली गुफ्तार माँ बहन का किया”

16. These two witnesses in their statement recorded under Section 161 of Cr.P.C have nowhere stated that any word stated by Praful Kumar caused any annoyance to both of them and others. Causing of annoyance to others is a sine qua non for commission of offence under Section 294 of IPC. In *Om Prakash Vs. State of M.P., reported in 1989 (5)(cri.) 589* it is held that mere platitudinous utterances signifying the enraged state of person's mind would not be sufficient to attract Section 294 of IPC.

17. It has to be noted that in the case on hand, the absence of allegations of annoyance and alleged stated words to be obscene words cannot attract the charge under Section 294 of IPC. As it is not clear that as to what obscene words were stated by the applicant mere saying that “गाली गलोच की” is not sufficient to attract rigor of Section 294 of IPC. In case of *N.S. Madhanagopal and Another Vs. K. Lalitha*, reported in *2022 SC OnLine SC 2030* Hon'ble Apex Court held as under:

“that mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) of IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that words uttered by the applicants/accused annoyed others, it cannot be said that the ingredients of the offence under Section 294 of IPC is made out.”

18. In light of the above discussion, it is manifestly clear that legal evidence to constitute an offence under Section 294 of IPC is missing.

19. Section 506 of IPC reads as under:

“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.”

20. Allegations in the complaint, against the applicant is that he stated that if they came back again, they will be run over by the tractor. Even if, for the sake of argument the above allegations are taken as true even then aforesaid allegations on its face value does not satisfy the necessary ingredients of section 506 of IPC. Section 506 of IPC talks about the criminal intimidation.

21. In *Manik Taneja Vs. State of Karnataka*, reported in (2015) 7 SCC 423, Hon'ble Apex Court after noticing Section 506, which defines the criminal intimidation observed as under:

“11. *****

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.”

12. *In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of “criminal intimidation”. The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without*

any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in [Section 503 IPC](#).”

22. In above cases the allegations against the applicant was that applicant abused the complainant. The Hon’ble Apex Court held that allegations that accused has abused complaint does not satisfy the ingredients of Section 506 of IPC.

23. In the case on hand, the allegations is that applicant and others threatened that if they came back, they will be run over by a tractor. Even if for the sake of argument the entire allegations are taken to be correct even then necessary ingredients for an offence under Section 506 Part II are not made out.

24. For proving an offence under Section 506 of IPC prosecution is required to prove:

- (i) that the accused threatened some person.*
- (ii) that such threats consisted of some injury to his person, reputation or property, or to the person, reputation or property of someone in whom he was interested.*
- (iii) that he did so with intent to cause alarm to that person, or to cause that person to do any act which he was not legally bound to do or omit to do an act which he is legally entitled to do as a means of avoiding the execution of such threat.*

25. A plain reading of the allegations does not satisfy the ingredients of Section 506 Part II of IPC because an offence of criminal intimidation can be made out only if it is established that the accused had an intention to cause an alarm to the complainant. Mere threats given to by the accused not with an intention to cause alarm to the complainant, but with a view to deterring them from interfering in discharge of his duties would not constitute an offence of criminal intimidation.

26. In the light of above discussion, I am of the considered view that necessary ingredients for an offence under Section 294 and 506-II of IPC are neither made out from the contents of complaint submitted in writing on the basis of which FIR was registered almost after one month or from the statements of witnesses recorded under Section 161 of Cr.P.C. Even if the entire allegations made in the charge sheet are taken as a gospel truth, even then all the ingredients necessary for constituting offences under Section 294 and 506-II of IPC are clearly missing. In such situation, as observed by apex Court in *State of Haryana Vs. Bhajanlal (supra)* that where the allegations made in the first information report or the complaint, even if that are taken at their face value and accepted in their entirety do not *prima-facie* constitute any offence or make out a case against accused, the power under Section 482 are required to be exercised. The case at hand falls under category (1) of the Bhajanlal's case.

27. Therefore, in view of the forgoing discussion and what has been stated in *State of Haryana Vs. Bhajanlal (supra)* by the Apex Court, the

proceedings of FIR No.111/2015 dated 08.05.2015 registered at Police Station Unchehara, District Satna and charge sheet of Criminal Case No.400/2015 (State of M.P. Vs. Prafulla Kumar Jaiswal) pending on the case file of JMFC, Unchehara are hereby quashed.

28. Petition is **allowed** accordingly.

(DINESH KUMAR PALIWAL)
JUDGE

Jasleen

Digitally signed by
JASLEEN SINGH SALUJA
Date: 2023.09.23 16:42:09
+05'30'