

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) 552 OF 2021

Subhash Mishrilal Jain,
aged 62 yrs, Occ. Business,
r/o. Jaistham Chowk, Chikhli,
Tahsil Chikhli, District Buldana

.... **APPLICANT**

...VERSUS...

1. Laxman Kondiba Aswar,
Aged about 76 yrs, Occ. Business,
residing at Survey No. 190/1
in front of MIDC, Jalna Road,
Chikhli, Tahsil Chikhli,
District Buldana

2. State of Maharashtra,
through Police Station, Chikhli,
Tahsil Chikhli, District Buldana.

...**NON-APPLICANTS**

Mr. Bhavin Suchak and Mr. V.D. Ruparelia
counsel for applicant.

Mr. A.S. Dhore, counsel for non-applicant 1.

Mr. N.S. Rao, APP for non-applicant 2.

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CORAM: ROHIT B. DEO, J.

DATE : 12.10.2021

ORAL JUDGMENT:

Heard Mr. Bhavin Suchak, the learned counsel for the
applicant, Mr. A.S. Dhore, the learned counsel for non-
applicant 1 and Mr. N.S. Rao, the learned APP for non-
applicant 2.

2. The applicant is assailing the order dated 24.10.2017, rendered by the Judicial Magistrate First Class, Chikhli in Miscellaneous Criminal Case 299/2017, of issuance of process for offences punishable under sections 504 and 506 of Indian Penal Code ("IPC" for short) and the judgment dated 25.2.2021, rendered by the Sessions Judge, Buldana, whereby Criminal Revision 97/2017, preferred by the applicant challenging the order of issuance of process, is dismissed.

3. The applicant shall be hereinafter referred to as the accused and the non-applicant 1 herein shall be referred to as the complainant. The complainant preferred Miscellaneous Criminal Case 299/2017 alleging commission of offence punishable under sections 504 and 506 of IPC. The complainant alleged that he is the owner and in possession of land assigned survey 190/1, situated at Chikhli Division – 2, Taluka Chikhli, District Buldana and the accused, who is rich and politically well connected, is persistently harassing and threatening the complainant to coerce him to give the said land to the accused.

3

apl552.2021

4. The complainant alleges that at 11.00 a.m. on 17.8.2017, while the complainant was present at his house situated on the said land, the accused accompanied by two or three unknown persons, threatened the complainant that he would be murdered if the said land is not given to the accused. The complainant avers that he is a senior citizen residing alone in the house constructed on the said land and he requested accused not to issue such threats. However, the accused was in no mood to see reason and abused the complainant in obscene language. It is alleged that due to the accused's influence and connections, nobody musters courage to confront him. It is further alleged that while the accused was threatening the complainant of harm, several persons gathered, however, due to fear, nobody interfered. The complainant reported the incident at the Chikhli Police Station and report was treated as non-cognizable.

5. The learned Magistrate recorded the statement of the complainant which reiterates the allegations in the complaint. The learned Magistrate then directed issuance of process for offences punishable under sections 504 and 506 of IPC recording that on perusal of the complaint, the verification

statement and the relevant record, sufficient ground for proceeding against the accused are revealed. The accused preferred Criminal Revision 97/2017 inter alia contending that there is nothing in the complaint and in the verification statement as would disclose commission of offence punishable under sections 504 and 506 of IPC.

6. The learned Sessions Judge dismissed the Revision on the premise that prima facie commission of offence is disclosed from the complaint and the verification statement.

7. The learned counsel for the accused Mr. Bhavin Suchak reiterates the submission which did not find favour with the learned Sessions Judge. Mr. Bhavin Suchak submits that the learned Magistrate did not conduct any inquiry nor did he apply judicial mind to the material on record. Mr. Bhavin Suchak would submit that in the absence of reproduction or reference to / of specific words in the complaint, the learned Magistrate erred in issuing process under section 504 of IPC. Mr. Bhavin Suchak further submits that the complaint does not disclose offence punishable under section 506 IPC, and the fact that not a single person, who allegedly gathered at the scene,

was examined, ought to have persuaded the learned Magistrate to direct an inquiry, which he failed to do. In rebuttal, the learned counsel Mr. A.S. Dhore for the complainant would submit that the complaint and the verification statement do disclose the necessary ingredients and nothing more was necessary for the learned Magistrate to issue process. Mr. A.S. Dhore would emphasize that the order of issuance of process need not be a speaking order and suffice it if the material on record disclose the commission of the offence. Application of mind by the learned Magistrate need not be spelt out from the reasons recorded and will have to be presumed if the material on record do disclose the necessary ingredients, is the submission.

8. Mr. Bhavin Suchak invites my attention to the observations of the Hon'ble Supreme Court in *M/s. Pepsi Foods Ltd and Another vs. Special Judicial Magistrate and Others, AIR 1998 SC 128* to buttress the submission that summoning of an accused in a criminal case is a serious matter. The relevant observations of the Hon'ble Supreme Court, read thus:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two

witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused”.

Mr. Bhavin Suchak then relies on the decision of the Hon’ble Supreme Court in ***Vikram Johar vs. State of Uttar Pradesh and Anr, [Cri. Appeal 759/2019(arising out of SLP (CRI.) 4820/2017)]*** to buttress the submission that mere allegation that the accused abused the complainant does not satisfy the ingredients of section 506 IPC. The Hon’ble Supreme Court was considering the legality of the order of the learned Magistrate of rejecting the application for discharge, and the confirmation of the said order by the High Court. The allegations in the complaint which fell for consideration read thus:

“.....When the complainant did not entertain the accused Surveyor Vikaram Johar, he and 2-3 other unknown persons, one of whom was holding a revolver, whom the complainant can identify, came to the complainant’s house on 2.10.2011 at 7.00 Pm and abused him in filthy language and about to assault him. When some neighbour arrived there, the Surveyor Vikaram Johar, he and 2-3 other unknown persons fled the spot on their vehicle. The people who had saved the complainant has seen the occurrence.”

The Hon’ble Supreme Court, after referring to the earlier decision in *Fiona Shrikhande vs. State of Maharashtra and Another, 2013(4)RCR (Criminal) 195: (2013) 14 SCC 44* and *Manik Taneja and Another vs. State of Karnataka and Another, 2015(1)RCR (Cri.) 765: (2015)7 SCC 423*, held that the allegations in the complaint, even if taken at face value, do not disclose the requisite ingredients of offence punishable under sections 504 or 506 of IPC. It would be apposite to reproduce the relevant discussion in the said judgment.

“26. Now, we revert back to the allegations in the complaint against the appellant. The allegation is that appellant with two or three other unknown persons, one of whom was holding a revolver, came to the complainant’s house and abused him in filthy language and attempted to assault him and when some neighbours arrived there the appellant and the other persons accompanying him fled the spot. The above allegation taking on its face value does not satisfy the ingredients of [Sections 504](#) and [506](#) as has been enumerated by this Court in the above two judgments. 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 mere allegation that appellant came and abused the complainant does not satisfy the ingredients as laid down in paragraph No.13 of the judgment of this Court in Fiona Shrikhande (supra).

27. Now, reverting back to [Section 506](#), which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande (supra) has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under [Section 506](#) IPC, what are ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edition with regard to proof of offence states following: -

“...The prosecution must prove:

(i) That the accused threatened some person.

(ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of some one 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 any act which he was legally entitled to do as a means of avoiding the execution of such threat.” A plain reading of the allegations in the complaint does not satisfy all the ingredients as noticed above.

28. On the principles as enumerated by this Court in Fiona Shrikhande (supra) and Manik Taneja (supra), we are satisfied that ingredients of [Sections 504](#) and [506](#) are not made out from the complaint filed by the complainant. When the complaint filed under [Section 156\(3\)](#) Cr.P.C., which has been treated as a complaint case, does not contain ingredients of [Sections 504](#) and [506](#), we are of the view that Courts below committed error in rejecting the application of

discharge filed by the appellant. In the facts of the present case, we are of the view that appellant was entitled to be discharged for the offence under Sections 504 and 506".

9. Mr. Bhavin Suchak further pressed in service the decision of the Hon'ble Supreme Court in *Birla Corporation Limited vs. Adventz Investments and Holdings Limited and Others, [(2019) 16 SCC 610]* to buttress the submission that application of judicial mind is condition precedent for initiating proceedings.

10. The learned counsel for the complainant Mr. A.S. Dhore would submit that the order of issuance of process need not be speaking order. Mr. A.S. Dhore invites my attention to the decision in *Dy. Chief Controller of Imports & Exports vs. Roshanlal Agarwal and Ors [(2003)4 SCC 139]* to buttress the submission that a reasoned order of issuance of process is not necessary. The order of issuance of process which was quashed by the High Court reads thus:

"Cognizance taken. Register the case. Issue summons to the accused."

The High Court held that the order of issuance of process did not show that the learned Magistrate had even perused the

complaint or that he had applied his judicial mind before taking cognizance. Disagreeing with the High Court, the Hon'ble Supreme Court emphasized that for issuance of process, the Magistrate has to be satisfied of existence of sufficient ground for proceeding and the Magistrate is not obligated to record reasons.

11. Mr. A.S. Dhore, then relies on the decision of the Hon'ble Supreme Court in *UP Pollution Control Board vs. Mohan Meakins Ltd and Ors [(2002)3 SCC 745]* which is referred to and followed in *Dy. Chief Controller of Imports & Exports vs. Roshanlal Agarwal and Ors*. Mr. A.S. Dhore further relies on the decision of the Hon'ble Supreme Court in *Bhushan Kumar & Anr vs State(Nct Of Delhi) & Anr , (2012)(5) SCC 424*.

12. In my considered view, an order of issuance of process is not rendered vulnerable due to absence of reasons. The learned Magistrate is not obligated to record reasons much less elaborate reasons. While it is trite law that summoning a person to face criminal prosecution is a serious matter and judicial mind must be applied to the materiel on record before

issuing process, the application of judicial mind can be inferred and presumed if the material on record, as is discernible from the complaint and the verification statement is sufficient to make out a case for trial.

13. In the present case, the submission of the accused is that, even if it is assumed that explicit reasons need not be recorded in the order, as a fact, the material on record is grossly insufficient to infer commission of offences punishable under sections 504 and 506 of IPC. I am in partial agreement with the said submission in as much as the complaint and the verification statement, even if taken at face value, do not disclose the ingredients of section 504 of IPC. The ingredients are (i) intentional insult (ii) giving 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. All that is alleged, without spelling out the words used, is that the accused abused the complainant. Such allegation does not satisfy the ingredients of offence punishable under section 504 of IPC, and to that extent the learned Magistrate clearly erred in issuing process. However, the ingredients of section 506 IPC are disclosed and the order of issuance of

12

apl552.2021

process does not suffer from any infirmity, to that extent. Criminal intimidation is defined in section 503 of IPC. Threat of injury to person is alleged in the complaint and the verification statement. It is specifically alleged that the threat was issued to force the complainant to give away the land to the accused. In essence, the allegation is that the threat to kill was issued to cause the complainant to do any act which he is not legally bound to do. I am satisfied that no fault can be found with the order of issuance of process for offence punishable under section 506 of IPC.

15. In the light of the discussion supra, the Application is partly allowed.

16. The order of issuance of process under section 504 of IPC is quashed and the said order is confirmed to the extent process is issued for offence punishable under section 506 of IPC.

Belkhede

Judge