

**HIGH COURT OF JAMMU AND KASHMIR AND LADAKH
ATJAMMU**

Reserved on 06.02.2023
Pronounced on 16.02.2023

CRM(M) No. 112/2020
CrlM No. 269/2020

Jia Lal and Another

.....Appellant/Petitioner(s)

Through :- Ms. Garima Gupta, Advocate

v/s

UT of J&K and Anr.

.....Respondent(s)

Through :- Mr. Dewakar Sharma, Dy.AG for R-1
Ms. Naidia Qadir, Advocate for R-2.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioners have challenged the complaint filed by respondent No. 2 against them alleging commission of offences under section 504 and 506(1) RPC, which is stated to be pending before the Court of Judicial Magistrate 1st Class, Bani. Challenge has also been thrown to order dated 20.07.2019 passed by the learned Magistrate, whereby process has been issued against the petitioners.

2) It appears that respondent No. 2 has filed a complaint before the learned Magistrate against the petitioners alleging therein that the petitioners have prepared a false and forged document/record so as to record the name of Karthik Japotra as son. It has been further alleged that the father's name of the aforesaid child has been recorded in the School as Jia Lal, petitioner No.1

herein. According to the complainant, petitioner No. 1 has deposed a false affidavit and filed the same in the office of the Zonal Education Officer concerned, stating therein that Karthik Japotra is his son, though the adoption deed in respect of the said child has been declared null and void. The complainant goes on to allege that on 08.04.2018 at about 6.00 PM, when the petitioners were walking on the road at Bani, the complainant asked them as to why they have prepared the false document and committed fraud, the petitioners used filthy language. When the complainant objected to it, they tried to catch hold of her and she raised hue and cry. She has further alleged in the complaint that the petitioners extended threats to her.

3) Vide order dated 04.04.2018 passed by the learned Judicial Magistrate, Bani cognizance of the complaint was taken and the same was sent to SHO, Police Station, Bani for investigation in terms of Section 202 Cr. P. C. The Investigating Officer filed his report before the trial Magistrate and upon going through the said report, the learned Magistrate framed a *prima facie* opinion that offences under Section 504 and 506(1) RPC are made out against the petitioners. Accordingly, the process was issued against the petitioners vide impugned order dated 20.07.2019.

4) The petitioners have challenged the complaint and the impugned order through the medium of instant petition on the grounds that no offence is made out against them on the basis of material that was available before the trial Magistrate. It has been contended that neither in the statement of the complainant nor in the statements of her witnesses, there is any mention about the nature of language alleged to have been used by the petitioners against the

complainant. It has also been contended that even the particulars of the alleged threats are missing in the complaint and the material collected by the trial Magistrate during the enquiry.

5) I have heard learned counsel for the parties and perused the material available on the record.

6) It is a settled law that a criminal prosecution cannot be quashed by the High Court in exercise of its jurisdiction under section 482 Cr.P.C. unless it is shown that the allegations and the material available on record do not constitute an offence against the accused. According to the petitioners, no offence is made out against the petitioners from the allegations made in the complaint and the material collected in support thereof.

7) In order to test the merits of the contentions raised by the petitioners, it would be necessary to have a look at the allegations made in the complaint against the petitioners. It has been alleged that the petitioners have forged the record to show that Karthik Japotra is the son of petitioner No.1. These allegations have not been established during the preliminary enquiry conducted by the learned Magistrate and in the impugned order dated 20.07.2019, it has been specifically observed by the learned Magistrate that ingredients of Section 420 RPC are not made out against the petitioners. The said order has not been assailed by respondent No. 2, complainant and it has acquired the finality.

8) The other allegation made by the complainant against the petitioners is that when she asked the petitioners as to why they have forged the record, the petitioners used filthy language against her and they also threatened her.

Similar statement has been made by the complainant before the trial Magistrate as well as before the Investigating Officer. The question that arises for determination is as to whether mere assertion that a person has been threatened or filthy language has been used against her, would be sufficient enough to hold that offences under sections 504 and 506(1) RPC are made out against the accused.

9) In the above context, it would be apt to refer to the provisions contained in Sections 504 of the RPC, which 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”

10) From a perusal of the aforesaid provision, it is clear that in order to satisfy the ingredients of Section 504 RPC, prosecution has to show that the accused has intentionally insulted the complainant so as to give him provocation, intending or knowing it that such provocation will cause him to break the public peace or to commit any other offence. Thus, mere act of insulting a person would not satisfy the ingredients of section 504 RPC. Act of insulting should be of such a nature as would give provocation to the person insulted to break the public peace or to commit any other offence.

11) The aforesaid provision came up for interpretation before the Supreme Court in the case **Fiona Shrikhande vs. State of Maharashtra and another, 2014 AIR (SC) 2013**. Paras 13 and 14 of the said judgment are relevant to the context and the same are reproduced 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.”

From the above analysis of law on the subject, it is clear that intentional insult must be of such a degree that should provoke a person to break public peace or to commit any other offence.

12) In the instant case, statement of the complainant and her witnesses contain general allegations that the complainant was insulted by the petitioners. It is nowhere alleged that this act of insulting by the petitioners has provoked the complainant to commit breach of public peace or to commit any other offence. What was the nature of the insult inflicted upon the complainant by the petitioners is also not coming forth from the statements of the complainant and her witnesses recorded during the enquiry. Therefore, from the material on record, the ingredients of offence under section 504 RPC

as explained in paragraphs (13) & (14) of the judgment of Supreme Court in the case of **Fiona Shrikhande** (supra) are not satisfied.

13) That takes us to the offence under section 506(1) RPC, which according to the trial court is *prima facie* made out against the petitioners. Section 506 RPC prescribes the punishment for offence of criminal intimidation and section 503 RPC defines the offence criminal intimidation. Section 503 RPC reads 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. Illustration A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B’s house. A is guilty of criminal intimidation.”

14) From a perusal of the aforesaid provision, it is clear that in order to satisfy the ingredients of offence of criminal intimidation, there has to be a threat of injury to a person, reputation or property of the complainant by the accused, which should be with the intention 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, so as to avoid the execution of such threat. In case of **Manik Taneja and Another vs. State of Karnataka and Anr., (2015) 7 SCC 423**, the Supreme Court had an occasion to examine the ingredients of sections 503 and 506 IPC. The Supreme Court after noticing the provisions contained in section 503 IPC, which define offence of criminal intimidation, has observed as under:

“11. xxxxxxxxxxxx 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.”

15) From the foregoing annunciation of law, it is clear that in order to constitute offence of criminal intimidation, there must be threat with an intention to cause alarm to the complainant or to do any act which he 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, would not be sufficient to bring the act within the definition of “criminal intimidation”.

16) In the instant case, it has been alleged by the complainant in the complaint as well as in her statement during enquiry that she was threatened by the petitioners. What kind of threat was extended to her is not discernible from the material on record. It has not been alleged by the complainant that while extending the threat, the petitioners wanted her to do or omit to do any act. In these circumstances, even the ingredients of section 506 RPC, are not made out against the petitioners from the material on record.

17) It is true that at the time of issuing the process against the accused, a Magistrate is not expected to embark upon detailed discussion of merit/demerit of the case, but the order directing issuance of process against an accused has to reflect application of mind on the part of a Magistrate. Issuance of process against an accused is a serious business and same should exhibit application of mind on the part of the Magistrate to the record available before him. It has to be borne in mind that in a criminal case when

the process is issued, the accused is exposed to threat of arrest and he has to appear before the court on each and every date of hearing. Therefore, a mechanical approach in issuing the process against the accused by the Magistrate has to be avoided at all costs.

18) In the instant case, as already discussed, the material on record coupled with the allegations made in the complaint do not make out offences under sections 504 and 506(1) RPC, as the ingredients of the aforesaid offences are not satisfied. Thus, it was not open to the learned Magistrate to hold that the aforesaid offences are made out against the petitioners and to issue process against them. The impugned order passed by the learned Magistrate is, therefore, unsustainable in law.

19) For the foregoing reasons, the petition is allowed and impugned complaint as well as the proceedings emanating therefrom, are quashed.

20) Copy of this order be sent to the learned trial Magistrate.

(Sanjay Dhar)
Judge

JAMMU
16.02.2023
Karam Chand/Secy.

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No