

AFR

Neutral Citation No. - 2024:AHC:2907

Reserved on- 02.11.2023

Delivered on- 08.01.2024

**Court No. - 82**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 8240 of 2023

**Petitioner :-** Judith Maria Monika Killer @ Sangeeta J.K.

**Respondent :-** State of U.P. and Another

**Counsel for Petitioner :-** Manoj Kumar Mishra

**Counsel for Respondent :-** G.A., Surendra Yadav

**Hon'ble Mrs. Jyotsna Sharma, J.**

1. Heard Sri Manoj Kumar Mishra, learned counsel for the petitioner, Sri Surendra Yadav, learned counsel for the respondent and learned A.G.A. for the State.

2. This petition under Article 227 has been filed challenging the order dated 24.09.2021 passed by Chief Judicial Magistrate in Complaint Case No. 8564 of 2018 (Dashrath Kumar Dixit Vs. Sangeeta J.K) summoning the accused under section 504 I.P.C. and further to set aside order dated 31.05.2023 passed in Criminal Revision No. 280 of 2021 by which the summoning order was affirmed. A further relief of quashing the entire proceedings of the complaint case has also been sought by means of this petition.

3. The relevant facts are as below.

Dashrath Kumar Dixit (the respondent herein) filed a complaint case against Sangeeta J.K., Executive Director, Kiran Society and ten others under section 500 I.P.C. with the allegations in brief as below:-

That the complainant is an Advocate and has been working for the welfare of handicapped weaker sections and for human rights and is also a R.T.I. activist. Kiran Society has been obtaining funds from foreign countries in the name of welfare of handicapped people, but they have been misusing those funds and exploiting them;

That the complainant therefore complained to the District Magistrate, Varanasi by an application dated 15.05.2017. The District Magistrate, Varanasi instituted an inquiry and Rajesh Kumar Mishra, District Divyangjan Sashaktikaran Adhikari, was deputed as the Inquiry Officer;

That the Inquiry Officer called parties to H.R.T.C. Auditorium on 19.05.2017 in connection with the Inquiry and in the presence of the parties, the complainant was insulted. The production of evidence during the inquiry was recorded by

opposite party no.11 - Divyangjan Sashaktikaran Adhikari that is Rajesh Kumar Mishra. The video can be obtained officially;

That during the inquiry, on 19.05.2017, in the presence of all the persons in the Auditorium, the O.P. No. 1, Sangeeta J.K. addressed the complainant in following words "this person is mad". The complainant, who is an Advocate and has been practising for last many years, objected and asked the O.P. No. 11 to include this fact in the inquiry report, but he paid no heed;

That one Raju Kumar Kanaujiya, was threatened by Sangeeta J.K. in front of all the others;

That the Inquiry conducted by O.P. No.11 is doubtful as he never considered the important aspects of the matter;

That the O.P. Nos. 2 -10, under the patronage of O.P. No.11, and the O.P. No.1-Sangeeta J.K. regularly keep threatening the complainant through letters in the office and outside the office in various ways. They regularly mislead the officers of the department;

And that the complainant was deliberately insulted and was put to mental trauma, therefore, a case be registered against them and the passport and visa of Sangeeta J.K. be seized so that she cannot escape to foreign country.

4. On the basis of above allegations, the court proceeded to record the statements of Dashrath Kumar Dixit under section 200 Cr.P.C. and of Vinod Kumar Goswami, Anil Kumar Gupta and Santosh Kumar Pandey under section 202 Cr.P.C. A number of documents were produced at that stage.

5. The C.J.M. proceeded to hear the complainant and passed summoning order on 24.09.2021. By this summoning order, only O.P. No.1 -Sangeeta J.K., Executive Director, Kiran Society, was summoned under section 504 I.P.C.

6. The accused Sangeeta J.K. preferred a revision before District Judge, Varanasi, assailing the summoning order. Both the sides were heard, the revisional court affirmed the order of summoning by passing an order on 31.05.2023.

7. Now, the accused is before this Court assailing both the orders.

8. The submissions of the petitioner are that the O.P. No. 2 filed a false and frivolous case. The incident allegedly happened on 19.05.2017. And the complaint has been filed more than a year thereafter i.e. on 24.09.2017. Further that the complainant in his statement under section 200 Cr.P.C. did not show anything which could have been considered as constituting an offence under section 504 I.P.C. And even the witnesses examined under section 202 Cr.P.C. did not state any material fact which can be taken as coming within the definition of section 504 I.P.C. It is further submitted that the complainant had filed the complaint under section 500 I.P.C., and from the evidence produced by him, no offence under section 504 I.P.C. or any other is made out. It is next contended that there is nothing to suggest that the complainant was intentionally

insulted or provoked intending and knowing that such act will cause him to break the public peace. The complaint has been filed after lapse of one year and four months from the date of incident with a view to harass him. Another contention is that the Magistrate took cognizance by summoning the accused-petitioner on 24.09.2021 under section 504 I.P.C. Therefore, the proceeding against him is barred by provisions of section 468 Cr.P.C., further that the witnesses Vinod Goswami, Santosh Kumar Pandey, Anil Kumar Gupta are ex-employees of the Kiran Society and therefore are interested in harassing her. They cannot be relied upon and that they have colluded with the petitioner for initiating this malicious prosecution.

9. The petitioner relies upon a judgment of Supreme Court given in **Vikram Johar Vs. State of Uttar Pradesh Aironline 2019 SC 297** passed in **Criminal Appeal No. 759 of 2019, decided on 26.04.2019**. In the aforesaid case before the Supreme Court, the facts were that the accused came with 2 -3 unknown persons, one of whom was holding revolver and he abused him in filthy language. The complainant was rescued by a neighbour when the accused persons were about to assault him. The accused was summoned. Summoning order was challenged. In the aforesaid judgment, the Supreme Court referred to a judgment given in **Fiona Shrikhande Vs. State of Maharashtra and Another 2013 14 SCC 44** passed in **Criminal Appeal No. 1231 of 2013 (arising out of S.L.P. (Cri). No. 382 of 2013), decided on 22.08.2013**, wherein it was held that the Magistrate is merely concerned with the allegations made in the complaint and has only to *prima facie* satisfy whether there are sufficient ground to proceed against the accused. In **paragraph 13** of the judgment in **Fiona Shrikhande (supra)**, the Supreme Court had noticed the ingredients of section 504 I.P.C. in following words:

*"13. Section 504 IPC comprises of 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."*

10. The Supreme Court in **Vikram Johar (supra)** case observed in **para-26** as below:

*"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)."*

The Court allowed the appeal and set aside the judgment given by High Court as well as by the trial court.

11. I went through the material on record including the copy of the statements given by the complainant under section 200 Cr.P.C. and the statements given by his witnesses under section 202 Cr.P.C. It is important to keep in mind that main contention of the petitioner is that no offence under section 504 I.P.C. is made out as there has not been any intentional insult which may be construed as provocation for breaking public peace or to commit an offence.

12. The petitioner has attracted attention of this Court to relevant portions of statements of the complainant as below:-

"मैं ज्यों ही कुछ कहने जा रहा था कि कुछ उल्टा सीधा करने लगे माँ-बहन की भद्दी-भद्दी गालियाँ देने लगे, मेरे द्वारा मिश्रा जी से कहने पर उन्होंने कहा कि मैंने कुछ नहीं सुना। मुझे पागल बोला गया था।"

His witness P.W.1- Vinod Kumar Goswami stated as below:-

"अधिवक्ता दशरथ कुमार दीक्षित को भरी सभा में पागल व अपशब्दों का प्रयोग किया।"

PW2-Anil Kumar Gupta stated as below:-

"दिनांक 19.05.2017 को N.R.T.C. आडिटोरियम में किरण सोसायटी के पक्षों को बुलाया गया जिसमें विकलांग अधिकारी, सोसायटी के सदस्य तथा मेरे अधिवक्ता दशरथ कुमार दीक्षित उपस्थित थे। जहाँ सबके समक्ष मुझे तथा मेरे अधिवक्ता दशरथ कुमार दीक्षित को अपशब्द कहा गया तथा पागल कहा गया। "

Another witness Santosh Kumar Pandey stated as below:-

"जाँच के दौरान हमारे अधिवक्ता श्री दशरथ दीक्षित जी को संगीता जे० के० द्वारा पागल बोला गया तथा बेइज्जत किया गया। "

13. There is no dispute that on the basis of above statements the learned trial court gave an opinion that *prima facie* offence under section 504 IPC is made out and ordered for summoning of the accused Sangeeta J.K., Executive Director of Kiran Society.

14. Before the revisional court, the contention of the accused revisionist was that mere use of insulting words without intention to make the person

addressed to commit breach of peace will not attract section 504 IPC and that even if the allegations made are taken as true, no offence is made out. Further, one of the contentions is that besides her, a number of other persons have been arrayed as accused and the complainant has not imputed any specific role to any of them and that the trial court passed the order without application of judicial mind. Perusal of impugned order demonstrates that after noting down all the averments of the revisionist, the learned court of revision, briefly dealt with the main issue i.e., whether offence under section 504 IPC was made out or not. The revisional court gave an opinion that as in front of a number of persons, the accused Sangeeta J.K. said that this person (the complainant) is mad, therefore, the offence under section 504 IPC is made out and refused to interfere in the order of summoning passed by the trial court.

**15.** In my opinion, two main issues are involved in this matter. Firstly, from the statements given by the complainant and his witnesses, if presumed as truthful, whether offence under section 504 IPC is made out? Secondly, whether the learned Magistrate applied its judicial mind to arrive at **requisite satisfaction** before he decided to take cognizance.

The phrase ‘sufficient ground to proceed’ has been treated at par with the word ‘satisfaction’ which the Court/the Magistrate is expected to arrive at, before issuance of process in the background of provisions of law under section 204 Cr.P.C. Section 204 Cr.P.C. is a very first section in Chapter XVI under the title “**commencing of proceedings before the Magistrates**”. From this stage the Magistrate has to tread very cautiously before jumping to take cognizance and proceed against the accused. On one hand, there is law which says that the Magistrate has to find out whether commission of an offence is disclosed from the material before him and that he has to go through the evidence and apply his judicial mind for this limited purpose, on the other hand the law says that he has to avoid meticulous analysis of the evidence and has not to hold a mini trial. There cannot be two opinions that a Magistrate shall not proceed in a casual and cursory manner. He is, of course expected to apply its judicial mind and the application of judicial mind suggests that he is well within his powers to go through the evidence for the purpose of ascertaining the credibility, truthfulness, inherent improbabilities, if any, although he has to refrain from threadbare analysis of evidence or splitting of hairs. A Magistrate ought to be prudent, a discernor and realistic. A fine balance has to be maintained in order to decide whether or not to proceed any further. Section 203 Cr.P.C and Section 204 Cr.P.C. are two sides of the same coin and here lies the real test of a judicial mind.

16. This Court in **Criminal Appeal No. 9188 of 2022 (Dr. Divya Nand Yadav and Another vs. State of U.P. and Another)** decided on **20.04.2023**, equated the word '*prima facie satisfaction*' with the sufficient ground to proceed on the basis of the judgment of the Supreme Court passed in **Fiona Shrikhande vs. State of Maharashtra and Another; (2013) 14 SCC 44**. Further the relative scope of Sections 203 and 204 Cr.P.C. were noted and considered by the Supreme Court in **Pepsi Food Limited and another vs. Special Judicial Magistrate and others; (1998) 5 SCC 749**, which said:-

"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." The Supreme Court emphasized the need that the Magistrate should not sit like a silent spectator.

In para no. 14 of the judgment of **Dr. Divya Nand Yadav and Another (supra)**, this court has held as below:-

*"14. The fact of the matter is that the court shall not proceed in a mechanical or a routine manner. It shall apply its mind, which is called a judicial mind and discretion as well. The court/the Magistrate, though shall not go deep into the evidence given and shall not weigh the evidentiary value in a meticulous manner. Except this rider, there is no other obstacles before the court below for arriving at the "prima facie satisfaction" a word which can be equated with the word "prima facie case".*

17. In the aforesaid judgment in **Dr. Divya Nand Yadav and Another (supra)**, this legal position has been reiterated that at the time of summoing, the trial court has to confine itself to the evidence produced on behalf of the complainant, however when the accused has been summoned and he prefers a revision, the revisional court is at an

advantageous position in the sense that it has opportunity to hear both the sides i.e., the complainant as well as the accused, therefore the revisional court is in a better position to take an independent view on the basis of material before itself. Further this court emphasised the need for conducting of the inquiry as envisaged in section 202 Cr.P.C. by the **Magistrate himself** and the pitfalls when the Magistrate does not play the expected role and therefore is faced with a situation where he may have to take a one sided view on the basis of plain statements given by the complainant and his witnesses. The Allahabad High Court's meaningful observations in para nos. 6 and 9 of the judgment in **Dr. Divya Nand (supra)** are worth mention in this respect.

The para nos. 6 and 9 of the aforesaid judgment are being reproduced here.

*“6. There is certain purpose behind enacting this provision in this manner. When a Magistrate who is trained in law, himself asks the questions he may elicit the facts which are nearer to truth. Obviously then there are much better chance to check the veracity of allegations, the evaluation of evidence before him and thereby come to the right conclusion for summoning the real culprits and at the same time putting his foot down that no innocent person is summoned unnecessarily. The purpose is lost when this power is not utilized.*

*9. The phrase occurring in Section 202 Cr.P.C. "inquire into the case himself" enjoins the Magistrate that he actually plays its part by examining the witnesses himself, rather than depending upon the statements which might be clouded, cryptic, obscure or ambiguous and sometime very direct and bald. The experience in courts strengthens the impression that more often than not unsupervised, one sided statement may have more to conceal than to reveal. It is said that law is a living being. It grows and develops according to the exigencies of the times. It will not be out of context to mention that the superior courts have observed in a number of cases that the trial courts ought to be quite alert when they decide to take cognizance or summon the accused persons, may be at the stage of Section 204 Cr.P.C. or otherwise. The superior courts have consistently kept on cautioning the courts to be quite circumspect, careful, alert and wakeful while putting the legal machinery in motion. The vicissitudes of cases, peculiar facts and situations do impact the interpretations of law and contribute towards the developments and progress of legal arena.”*

**18.** Now I come to the question whether an offence under section 504 IPC is made out. In **Fiona Shirkhande Vs. State of Maharashtra and Another (supra)**, the Supreme Court emphasised that intentional insult must be such as to give provocation to the person insulted to break the public peace or to commit any other offence. As alluded to earlier, the only allegation is that in front of several others, participating in the meeting, the accused said that this person (the complainant) is mad. This may be noted that these words were uttered when both the sides were

called in connection with an inquiry which was initiated on the basis of a number of allegations made by the complainant against the accused and her society.

**19.** From all the facts and circumstances, it appears that it was a stray statement made in a careless manner, not intending that it may provoke a person to break the public peace or commit any other offence. Even if, for the sake of argument, uttering of such words are taken as intentional insult however in my opinion the same cannot be construed as of such degree so as to provoke any person to cause breach of peace. Circumstances suggest that uttering of such words could be an unintended spontaneous remark made in the prevailing atmosphere in the backdrop of number of allegations, which were flown at the accused and her society. More often than not, in informal atmosphere such remarks may be carelessly thrown and may even form part of casual conversation having no criminal element for intentional causing of breach of peace. Any such stray statements made by any person, may be inappropriate, improper and rude, however, in my view, they do not bring the Act within the four corners of section 504 as defined in Indian Penal Code. Definitely what may be the impact of spoken words, can only be inferred from the peculiar facts and circumstances of a case. In the case in hand, the remark was inappropriate or even rude but circumstances *prima facie* do not establish that it was intended to provoke the person to cause breach of peace. The courts concerned failed to apply law in correct perspective.

**20.** In my opinion, *prima facie* no offence under section 504 IPC is made out and therefore this is a case where this court, in exercise of powers under Article 227 of the Constitution, should interfere to prevent and nip in the bud misuse of law, hence the impugned orders are set-aside and this petition is **allowed**.

**Order Date :-** 8.1.2024

Sumit Kumar