

Neutral Citation No. - 2024:AHC:105655

AFR

Reserved on 27.06.2024

Delivered on 01.07.2024

Court No. - 74

Case :- APPLICATION U/S 482 No. - 15986 of 2024

Applicant :- [REDACTED] And 3 Others

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Abhay Kumar, Kumar Ankit Srivastava

Counsel for Opposite Party :- G.A., Qazi Wakil Ahmad

Hon'ble Saurabh Shyam Shamshery, J.

1. Applicant-1, [REDACTED], is daughter-in-law of Complainant, i.e., Opposite Party-4, whereas Applicants-2, 3 and 4 are close relatives of Applicant-1.

2. It is the case of applicants that Applicant-1 has earlier lodged a FIR dated 30.05.2022 being Case Crime No. 0091 of 2022 at Police Station Shivrajpur, District Kanpur Nagar against Opposite Party-4, against her husband and his close relatives for offence under Sections 498A, 504, 506 IPC and 3/4 Dowry Prohibition Act, 1961, alleging that she got married with son of Opposite Party-4 on 28.11.2019 and thereafter she was suffered cruelty with regard to demand of dowry and later on she was sent back to her parental house. Thereafter on persuasion in the month of November, 2020 she was allowed to live in a room at her matrimonial house but still she suffered cruelty at the hands of her husband, Opposite Party-4 and their relatives. In aforesaid FIR after investigation charge sheet has been filed against said persons.

3. Sri Kumar Ankit Srivastava, learned counsel for applicants submitted that Applicant-1 still suffered atrocities and on an occurrence occurred on 14.07.2022, when she was not allowed to enter in her matrimonial house and assaulted, another FIR dated 14.07.2022 being Case Crime No. 0500 of 2022 was lodged under Section 498A, 342, 504, 506 IPC wherein after

investigation charge sheet has also been filed against persons of Complainant side.

4. Learned counsel further submitted that in above background, in order to put pressure on applicants, as a counter blast, Opposite Party-4, i.e., mother-in-law of Applicant-1 lodged FIR dated 10.06.2023, i.e., after about 11 months, against applicants being Case Crime No. 0198 of 2023, under Sections 457, 448 and 506 IPC giving a different version of alleged occurrence took place on 14.07.2022, on which Applicant-1 has already lodged FIR.

5. Learned counsel further submitted that investigation was conducted on aforesaid FIR lodged against applicants wherein also charge sheet was filed on 19.08.2023 but only under Section 504, 506 IPC on which Trial Court has taken cognizance by means of impugned order dated 27.10.2023. The charge sheet and summoning order is under challenge in present application.

6. Learned counsel for applicants submitted that present criminal proceedings are result of a counter blast. On basis of alleged occurrence took place on 14.07.2022 it was the Applicant-1, who lodged prompt FIR wherein after investigation charge sheet has been filed, whereas Opposite Party-4 has filed a belated FIR and as referred above, major allegations with regard to Sections 457, 448 IPC were not found and charge sheet was filed only under Sections 504, 506 IPC. Learned counsel further referred statements recorded during investigation that ingredients of offence under Sections 504, 506 IPC are not made out.

7. Per contra, learned AGA appearing for State and learned counsel for Complainant submitted that on basis of statements recorded during investigation and medical report, Investigating Officer has filed charge sheet under above referred offences and Trial Court concerned has rightly taken cognizance, which does not require any interference. They also referred statements recorded during investigation.

8. Heard learned counsel for parties and perused the material available on record.

9. Before advertng to rival submissions it would be relevant to refer few paragraph of a recent judgement passed by Supreme Court in **A.M. Mohan Vs. State Represented by SHO and another, 2024 SCC OnLine SC 339:-**

“9. The law with regard to exercise of jurisdiction under Section 482 of Cr. P.C. to quash complaints and criminal proceedings has been succinctly summarized by this Court in the case of Indian Oil Corporation v. NEPC India Limited¹ after considering the earlier precedents. It will be apposite to refer to the following observations of this Court in the said case, which read thus:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few —Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234], State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059], Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045], State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628], Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615], Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 : 2000 SCC (Cri) 786], M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

10. In order to appreciate the rival submissions, it would be apposite to refer Sections 503, 504 and 506 IPC 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.

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.”

“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.”

11. Relevant part of FIR and statements recorded during investigation are reproduced hereinafter:

Relevant part of FIR

"प्रार्थिनी की बहू आकांक्षा अपने मायके वालो पिता मिलन कटियार, मां बबिता कटियार व भाई आकाश कटियार व अराजकतत्वो की मदद से दिनांक **14.07.2022** रात्रि **11** बजे हथौड़े, आरी एवम कटर आदि की मदद से प्रार्थिनी के मकान का गेट का ताला काटकर घर के अन्दर घुस गयी। आकांक्षा व उसके घरवाले दबंग किस्म के व्यक्ति हैं जिन्होंने प्रार्थिनी के घर को हथियाने की कोई कसर नहीं छोड़ी है। सारी घटनाओ के सीसीटीवी साक्ष्य उपलब्ध हैं। जिसे विपक्षी उक्त लगे सीसीटीवी कैमरो को तोड़ने की हर समय धमकी देती है कि किसी दिन सारे सीसीटीवी कैमरो को तोड़कर सभी लोगो की हत्या करवा देंगे। प्रार्थिनी व उसके परिवार को जेल भिजवाने का हर सम्भव प्रयास आकांक्षा कटियार द्वारा किया जा रहा है। उपरोक्त सभी वाद वर्तमान में इलाहाबाद उच्च न्यायालय में विचाराधीन है। उपरोक्त आकांक्षा कटियार व उसके मां बाप, भाई से प्रार्थिनी व उसके पति व पुत्र को जानमाल का खतरा है। यह लोग प्रार्थिनी, उसके पति व पुत्र शुभम की हत्या भी करा सकते हैं तथा मकान व सम्पत्ति पर कब्जा भी कर सकते हैं। अतः श्रीमान जी से विनम्र प्रार्थना है कि सम्पूर्ण प्रकरण की जांच किसी निष्पक्ष अधिकारी से कराकर दोषीजनों के

विरुद्ध मुकदमा पंजीकृत किये जाने का आदेश सम्बन्धित थाने की पुलिस को देने की कृपा करें ताकि प्रार्थिनी व उसके पति व पुत्र को न्याय मिल सके।"

Relevant part of statement of Complainant

"प्रार्थिनी की बहू आकांक्षा अपने मायके वालो पिता मिलन कटियार, मां बबिता कटियार व भाई आकाश कटियार व अराजकतत्वो की मदद से दिनांक **14.07.2022** रात्रि **11** बजे हथौड़े, आरी एवम कटर आदि की मदद से प्रार्थिनी के मकान का गेट का ताला काटकर घर के अन्दर घुस गयी। आकांक्षा व उसके घरवाले दबंग किस्म के व्यक्ति है जिन्होंने प्रार्थिनी के घर को हथियाने की कोई कसर नहीं छोड़ी है। सारी घटनाओं के सीसीटीवी साक्ष्य उपलब्ध हैं। जिसे विपक्षी उक्त लगे सीसीटीवी कैमरों को तोड़ने की हर समय धमकी देती है कि किसी दिन सारे सीसीटीवी कैमरो को तोड़कर सभी लोगो की हत्या करवा देंगे। प्रार्थिनी व उसके परिवार को जेल भिजवाने का हर सम्भव प्रयास आकांक्षा कटियार द्वारा किया जा रहा है। उपरोक्त सभी वाद वर्तमान में इलाहाबाद उच्च न्यायालय में विचाराधीन है। उपरोक्त आकांक्षा कटियार व उसके मां बाप, भाई से प्रार्थिनी व उसके पति व पुत्र को जानमाल का खतरा है। यह लोग प्रार्थिनी, उसके पति व पुत्र शुभम की हत्या भी करा सकते है तथा मकान व सम्पत्ति पर कब्जा भी कर सकते हैं। इस तरह वादिनी मुकदमा ने एफआईआर का समर्थन करते हुए अपने बयान अंकित कराये।"

Relevant part of statement of Husband of Complainant

"दिनांक **14.07.22** को आकांक्षा घर से पेशी के लिए माननीय न्यायालय गई थी जब शाम को आई तो हम लोग दरवाजा बंद करके कहीं गए हुए थे तब आकांक्षा द्वारा दरवाजा तोड़फोड़ कर अंदर कमरे में आई थी उस समय आकांक्षा के भाई आकाश कटियार, माता बबीता कटियार, पिता मिलन कटियार भी मौके पर मौजूद थे जब हम लोगों वापस आये तथा एतराज किया तो सभी लोगों ने मिलकर गाली गलौज व जान से मारने की धमकी देने लगे तथा कहने लगे कि मेरी लड़की यही रहेगी यहां से तभी जाएगी जब तुम लोगों को मार देगी तब से आकांक्षा कटियार घर की दूसरी मंजिल पर रह रही हैं तथा आए दिन गाली गलौज व जान से मारने की धमकी दे रही है कि हम इस घर से कभी निकलेंगे नहीं। आकांक्षा के भाई आकाश कटियार माता बबीता कटियार तथा मिलन कटियार आकांक्षा से मिलने के बहाने आते हैं तथा हम लोगों को गाली गलौज व जान से मारने की धमकी देते रहते हैं। इस प्रकार से अपना बयान दे रहे है।"

Relevant part of statement of Son of Complainant, i.e., Husband of Applicant-1

"दिनांक 14.07.22 को आकांक्षा घर से न्यायालय में मुकदमे के संबंध में गयी थी वापस जब घर आयी तो हम लोग घर पर नहीं थे तब आकांक्षा द्वारा दरवाजा को फादकर घर के अन्दर आ गयी थी तथा गेट में तोड़ फोड़ की गई थी। जब मेरे मम्मी पापा ने एतराज किया तब आकांक्षा कटियार द्वारा मम्मी पापा व मुझे गाली देते हुए जान माल की धमकी देने लगी थी। आकांक्षा के भाई आकाश कटियार माता बबीता कटियार व पिता मिलन कटियार भी मौके पर गाली गलौज तथा धमकी दे रहे थे आकांक्षा की मां बबीता कटियार पिता मिलन कटियार तथा भाई आकाश कटियार आए दिन मेरे घर पर आकांक्षा के मिलने के बहाने आते हैं तथा हम लोगों को गाली गलौज देते हुए जानमाल की धमकी देते रहते हैं श्रीमान जी मुझे उम्मीद है कि आकांक्षा अपने परिवार के साथ मिलकर कोई बड़ी घटना घटित कर सकती है तथा हम लोगों को जान माल का नुकसान हो सकता है।"

(Emphasis supplied)

12. It is not in dispute that relation between parties are not cordial and criminal cases are pending between parties as well as husband of Applicant-1 has also filed an application under Section 13 of Hindu Marriage Act, 1955.

13. Before considering, whether it is a fit case to quash criminal proceedings, it would be relevant to mention some part of a recent judgment passed by Supreme Court in **Mohammad Wajid and another vs. State of U.P. and others, 2023 INSC 683** as under:

"24. An offence under Section 503 has following essentials:-

1) Threatening a person with any injury;

(i) to his person, reputation or property; or

(ii) to the person, or reputation of any one in whom that person is interested.

2) The threat must be with intent;

(i) to cause alarm to that person; or

(ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or

(iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

*25. Section 504 of the IPC contemplates intentionally insulting a person and thereby provoking such person insulted to breach the peace or intentionally insulting a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of the public peace or to commit any other offence. Mere abuse may not come within the purview of the section. But, the words of abuse in a particular case might amount to an intentional insult provoking the person insulted to commit a breach of the public peace or to commit any other offence. **If abusive language is used intentionally and is of such a nature as would in the ordinary course of events lead the person insulted to break the peace or to commit an offence under the law, the case is not taken away from the purview of the Section merely because the insulted person did not actually break the peace or commit any offence having exercised selfcontrol or having been subjected to abject terror by the offender. In judging whether particular abusive language is attracted by Section 504, IPC, the court has to find out what, in the ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant.***

26. Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant. In King Emperor v. Chunnibhai Dayabhai, (1902) 4 Bom LR 78, a Division Bench of the Bombay High Court pointed out that:-

“To constitute an offence under Section 504, I.P.C. it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. Public peace can be broken by angry words as well as deeds.”

27. A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant.”

14. As referred above, it is not in dispute that there are matrimonial dispute between Applicant-1 and her husband and other relatives. Petition of divorce is also pending. Applicant-1 has filed a prompt FIR of alleged occurrence took place on 14.07.2022 against her husband, Opposite Party-4 and their relatives wherein after investigation charge sheet has been filed, whereas Opposite Party-4 has lodged FIR of the same occurrence giving a different version with a delay of almost 11 months. Initially FIR was filed under Sections 457, 448 and 506 IPC, however, after investigation allegation qua to offence under Sections 457 IPC (Lurking house trespass or house-breaking by night in order to commit offence punishable with imprisonment) and 448 IPC (Punishment for house trespass) were not found true and charge sheet was filed only under Sections 504, 506 IPC.

15. In order to consider rival submissions, whether ingredients of Sections 504, 506 IPC are satisfied or not, I have carefully perused the contents of statements recorded during investigation.

16. As referred above, statements of witnesses are verbatim that applicants after breaking lock of house entered inside and when Complainant side reached and it was objected, accused-applicants abused them and extended threat to cause loss to life and such act was repeated also.

17. As referred in **Mohammad Wajid (supra)** in order to make out a case under Section 506 IPC the ingredients of criminal intimidation as mentioned in Section 503 IPC has to be complied with, i.e., the threat caused by applicant must be 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. However, as referred above, part of allegation that applicants have committed offence of lurking premises by night and house trespass was not found to be proved. Therefore, the only allegation left is to raise abusive language and cause threat. However,

statements are much short of ingredients that applicants had an intention to cause alarm to Complainant side. Nature of abusive language is not specific. Presence of Applicant-1 at the house was natural and there is no evidence that there was intent. As such ingredients of Section 503 IPC as punishable under Section 506 IPC are not made out.

18. So far as allegation under Section 504 IPC is concerned, as referred in **Mohammad Wajid (supra)** that mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504 IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and as referred above even the nature of abusive language is not on record. There is no statement to the effect that alleged abusive language used by applicants was sufficient to insult the Complainant side to commit a breach of peace of an offence. As such, in the present case, even ingredients of Section 504 IPC are absolutely missing.

19. In aforesaid circumstances, since ingredients of Sections 504, 506 IPC are absolutely missing as well as not only FIR was lodged after about 11 months, without any explanation but on basis of above referred facts present proceedings are counter blast and were initiated with motive for wreaking vengeance, therefore, in the light of **A.M. Mohan (supra)**, it is a fit case where in exercise of inherent power present criminal proceedings can be quashed.

20. In the result, application is allowed. Impugned charge sheet dated 19.08.2023, under Sections 504, 506 IPC, summoning/ cognizance order dated 27.10.2023 as well as entire proceedings of Criminal Case No. 148979 of 2023 (State vs. XXXXXXXXXX and others), arising out of Case Crime No. 198 of 2023, under Sections 457, 448, 506 IPC, Police Station Barra, District Kanpur Nagar, are hereby quashed.

21. Registrar (Compliance) to take steps.

Order Date :-01.07.2024

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