

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 1168 of 2017

Devendra Nath Choubey S/o Rameshwar Nath Choubey, R/o Jodhadih
More, Shivpuri Colony, P.O. & P.S.- Chas, District- Bokaro

... .. **Petitioner**

-Versus-

The State of Jharkhand

... .. **Opp. Party**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Kaushik Sarkhel, Advocate

For the Opposite Party : Ms. Priya Shrestha, Advocate

J U D G M E N T

Reserved on 27.08.2024

Pronounced on 12.11.2024

1. This criminal revision petition is directed against the judgment dated 09.06.2017 passed by the learned Additional Sessions Judge 1st, Bokaro in Criminal Appeal No.13 of 2005 whereby and whereunder the learned appellate court has affirmed the conviction of the petitioner under Sections 353, 504/34 of the Indian Penal Code (*hereinafter referred to as IPC*) but modified the sentences awarded to the petitioner to undergo Simple Imprisonment for 06 months with fine of Rs.500/- for each offence with default sentences. Both sentences were directed to run concurrently.

2. Vide Judgment of conviction and the order of sentence dated 07.02.2005 passed by the learned Judicial Magistrate, 1st, Class, Bokaro in G.R. Case No.559 of 2003 / Trial No.15 of 2005 (arising out of Pindrajora P.S. Case No.52 of 2003 dated 05.07.2003), the petitioner along with Banamali Singh Choudhary and Ramlal Singh were convicted for offence under Sections 353, 504/34 of IPC and had sentenced them to undergo Simple Imprisonment for two years under Sections 353 and 504 of IPC for each offence and had directed that the sentences shall run

concurrently. The learned trial court had acquitted the petitioner and co-accused persons from the charge under Section 448 of IPC.

Arguments on behalf of the petitioner.

3. Learned counsel for the petitioner submitted that the petitioner faced criminal case for the alleged offence under Sections 353, 448, 504/34 of the IPC and was convicted for the offence under Sections 353 and 504/34 of IPC, but acquitted for the offence under Section 448 of IPC.

4. The learned counsel submitted that so far as the office staff of the informant is concerned, they are not the eye-witness to the occurrence and so the main evidence is of that of the informant who was examined as P.W.-4. The learned counsel has referred to the evidence of P.W.-4 as recorded in the trial court's judgment. During the course of argument, it appeared that the informant had supported his case in chief and the entire cross-examination of the informant is related to his official work whereby he had ultimately refused to issue the death certificate.

5. The learned counsel submitted that even if the entire allegation made against the petitioner and the evidence of P.W.-4 are taken to be correct on its face value, no offence under Section 353 of IPC is made out, inasmuch as, the basic ingredients are completely absent. He submitted that no criminal force has been used and there is no allegation that the informant was stopped from performing his official duty. The informant was the Executive Magistrate before whom an application was made for the purposes of issuance of death certificate which the Executive Magistrate had declined to issue.

6. The learned counsel submitted that the term 'force' has been defined in Section 349 of IPC. Section 350 defines 'criminal force' and Section 351 defines 'assault'. He submitted that in absence of the basic ingredients constituting the offence under Section 353 of IPC, the impugned judgments are perverse and calls for interference.

7. So far as the offence under Section 504 of IPC is concerned, no argument as such has been advanced by the learned counsel for the

petitioner and this fact has also been recorded in paragraph 6 of the order dated 27.08.2024.

8. The learned counsel for the petitioner relied upon the following judgments:

- (i) *(2015) 7 SCC 423 (Manik Taneja Vs. State of Karnataka and anr.) Para-10*
- (ii) *1995 SCC Online P&H 157 (Jaswinder Singh Vs. State of Punjab) Para-7*
- (iii) *2023 SCC OnLine Bombay 818 (Amir Khan Vs. State of Maharashtra and others) Para-7 to 15*
- (iv) *Judgment passed by Hon'ble Madhya Pradesh High Court at Jabalpur in Criminal Appeal No.5697 of 2019. Para-16 to 23*

Arguments on behalf of the Opposite Party State.

9. The learned counsel appearing on behalf of the Opposite Party-State opposed the prayer and submitted that there are concurrent findings recorded by both the courts while holding the petitioner guilty. She submitted that the informant of the case was an Executive Magistrate who was discharging his duty even in his chamber when the accused persons entered in his chamber and committed the crime. The learned counsel specifically referred to Paragraph No.5 of the appellate court judgment and submitted that the basic ingredients for committing offence for which the petitioner has been convicted have been duly satisfied.

10. The learned counsel further submitted that the appellate court recorded that the informant has clearly stated that the accused said “*Sale Bahot Kanoonchi Banta Hai*” and quarreled with him and deterred him from doing the official work. The learned counsel submitted that both the judgments are well discussed and do not call for any interference. She submitted that to attract offence under Section 353 of IPC, criminal force or assault is required to be established and in the present case, the basic ingredients have been duly established. The learned counsel submitted that Section 353 of IPC uses the term “deter from discharging official duty”.

Arguments of the petitioner on the point of sentence.

11. In response, the learned counsel for the petitioner submitted that without prejudice to the submission on merit, the petitioner has faced long drawn case right from the year 2005, and though the appellate court has taken a lenient view and reduced the sentence to six months, but it may further be considered for reduction of sentence. He submitted that there is no minimum sentence prescribed under the offence for which the petitioner has been convicted.

Arguments of the Opposite Party State on the point of sentence.

12. The learned counsel for the opposite party State opposed the prayer for reduction of the sentence. She submitted that the trial court had given sentence of 02 years and the appellate court has taken due care by reducing the sentence to six months.

Findings of this Court

13. The prosecution case is based on the written report of Manoj Jaiswal, Executive Magistrate / Resident Magistrate, Bokaro alleging that on 05.07.2003 at about 11.30 AM, when the informant was working in his office room, three persons entered into his office room and one person disclosed his name as D.N. Choubey, Block Congress President and asked him as to why the Informant had cancelled the death certificate of his man and asked him to immediately issue the death certificate and threatened him of dire consequences. The accused forcibly sat in the office chamber of the informant and started giving threat of his life and property and abused him in filthy language. The crowd gathered in his chamber and later on, the staff of his office intervened and pacified the accused. On enquiry, the other two persons disclosed their names as Banamali Singh Choudhary, Ex-Pramukh, Chas Block and Ramlal Singh. The Informant prayed for providing adequate security to him and for taking appropriate legal action against the accused.

14. On the basis of the written report, the case was registered as Pindrajora P.S. Case No.52 of 2003 dated 05.07.2003 under Sections 353, 448, 504/34 of IPC against the petitioner, Banamali Singh Choudhary and Ram Lal Singh. After completion of investigation, the

Investigating Officer submitted charge-sheet against the accused under the same sections and thereafter on 02.08.2003, the learned Chief Judicial Magistrate, Bokaro took cognizance of the offence in the case under the same sections. On 10.11.2003, the substance of accusation for the offences under Sections 353, 448, 504/34 IPC was explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

15. In course of trial, the prosecution examined altogether five witnesses in support of its case. P.W.-1 is Bhawani Das, P.W.-2 is Munna Singh, P.W.-3 is Vakil Singh, P.W.-4 is Manoj Jaiswal who is the Informant of the case and P.W.-5 is S.I. Prem Sundar Prasad who is the Investigating Officer of the case.

16. PW-1 in his examination-in-chief deposed that the occurrence is of 05.07.2003 at about 11:30 AM and he was posted as Orderly in the office of the Informant. When he heard alarm, he went there and found that three persons including the petitioner were verbally engaged with the Informant in connection with birth certificate and they were making noise and abusing the Informant. On the instruction of the Informant, he called the police. Thereafter, police came there and apprehended all the three persons and took away. He identified one person in court and claimed to identify the rest two persons. In his cross-examination, he admitted that all the three persons used to come regularly in the office-cum-chamber of the Informant in connection with birth and death certificates. The Informant had asked them to speak in low voice. He further admitted that the Informant had not prepared the affidavit of the petitioner and Banamali Singh Choudhary on that day. When he reached at the place of occurrence, Safi Ahmad was present there and other staff and public came there after the occurrence. He further stated that there was delay in issuance of death certificate as the document relating to the crematory did not give the correct date. He further admitted that the police had not taken his statement except his name and address.

17. PW-2 in his examination-in-chief deposed that on hearing noise,

he had reached at the chamber of the Informant after the occurrence and he was directed by the Informant to call the D.S.P. and he had gone alone to call the police immediately. He identified the accused person who had come to court. In his cross-examination, he admitted that when he reached at the place of occurrence, staff and local people were present there. He further admitted that Ramlal Singh had met the Informant for preparing the death certificate of his wife and he does not know as to what the accused persons had said to the Informant.

18. PW-3 in his examination-in-chief admitted that he had not seen the occurrence. In his cross-examination, he further admitted that he is an old staff of the office and he know the accused persons. The accused persons are local people and they used to visit the office regularly. He further admitted that he is not an eye-witness to the occurrence and he knows nothing about the facts of the case.

19. PW-4 is the Informant of the case and in his examination-in-chief, he deposed that he is posted as Executive Magistrate-cum-Resident Magistrate, Bokaro since 15.11.2000. The occurrence had taken place on 05.07.03 at about 11.30 AM, when he was disposing of the official files in his office chamber. The accused persons had come to his office abusing him loudly and one of them had said his name as D.N. Choubey, the petitioner, Town President, Chas (Congress) and the rest two were Ram Lal Singh and Banamali Singh Choudhary, Ex-Pramukh, Chas Block. The petitioner had asked the informant as to why the informant had rejected the death certificate of the family member of his man. The informant had replied that the date of death is 19.04.2002, but the funeral certificate was issued for 17.01.2003 and there was difference of 9 months between both the dates. The second error in the application was that the cause of death of his wife was written as Paralysis and as per Rule 10(3) of the Birth and Death Rules, the certificate of the doctor was also to be provided, but it was not provided. On giving such information, the accused persons replied that the Informant is showing himself to be an expert of law and the petitioner sat on the chair in front of him and

started abusing him in filthy language. When the informant forbade the petitioner, the petitioner did not stop abusing the informant and then the informant sent information to the office of the Dy. S.P. through his peon and also informed the local police station, Chas by his mobile. Thereafter, two constables from the Dy. S.P. office reached there and tried to persuade the accused but they did not listen. In the meantime, the officers of the local police station reached there and arrested them. At that time itself, the informant submitted a written report to the Officer-in-charge of police station. He exhibited the written report as Exhibit-1. He further deposed that Form No.4 was filed by Ram Lal Singh before him in which he had given his endorsement at two places, one in green colour and the other in red colour on which the endorsement of the Junior Statistical Supervisor is also present. He exhibited the Form No.4 as Exhibit-2 (with objection), Funeral Certificate issued by the Kali Mandir burning place as Exhibit-3 (with objection) and the affidavit dated 27.01.2003 filed by Ramlal Singh as Exhibit-4 (with objection). He deposed that applicant had filed certified copy of the voter list, copy of Medical Book No.385601 of B.S.L. and photocopy of Ration Card alongwith Form No.4. He further deposed that apart from the petitioner, other persons were also abusing him. He identified Ramlal Singh in court and claimed to identify the other. In his *cross-examination*, the Informant deposed that as per Duty Chart he was deputed to maintain the law and order, to do judicial works and to issue the certificates as delegated power of the S.D.O., but he could not say as to by which notification, he was delegated the power to issue birth and death certificate. He further admitted at Para-10 and 11 that a dais has been made for judicial work where judicial works are conducted and the bench clerk and office clerk sit below therein. There is also space for sitting of the lawyers and his chamber is adjacent to that place with attached bath room. He sits in his office from 11.30 AM to 4.30 PM. He admitted at Para-13 that 8 cases were listed in his court on the date of occurrence and as per his Duty Chart, his work was also to go through the affidavits. He

stated at Para-14 that the petitioner had abused him in filthy language. Bhawani Das (Peon), Safi Ahmad (Bench Clerk) and other two persons were present at the place of occurrence. He had sent his Orderly Bhawani Das to Dy. S.P. office at about 11.45 AM and had called the local police station, Chas by his mobile. He explained the procedure and the requirements for issuance of birth and death certificate and had given the reason so that the applicant could know the reason of the refusal.

20. PW-5 is the Investigating Officer of the case and in his examination-in-chief, he deposed that on 05.07.2003, he was posted at Pindrajora police station and he had himself taken the charge of investigation of the case. He further deposed that in course of investigation, he perused the written report, application of death certificate and the affidavit annexed with it and had recorded the defence statements of the accused persons. He had also recorded the statements of A.S.I. H.M. Pandey of Chas police station and the re-statement of the informant and the statements of the witnesses namely, Bhawani Das, Munna Singh and Vakil Singh. He has given the description of the place of occurrence. After completion of the investigation, he submitted charge-sheet against the accused persons. During cross-examination, he admitted that he had reached at the place of occurrence at 16:45 hours which was shown to him by Bhawani Das. He admitted at Para-10 that during the investigation he came to know that the reason of the occurrence is regarding issuance of death certificate.

21. After closure of prosecution evidence, the statements of the petitioner were recorded under Section 313 of Cr.P.C. on 31.08.2004 wherein he denied the incriminating evidences put to him and claimed to be innocent. The petitioner did not adduce any oral or documentary evidence in his defence.

22. The learned trial court considered the materials on record and recorded its findings that all the five witnesses have supported the fact about abusing the Informant by the accused persons while he was discharging his duty in his office-cum-chamber and they insulted him

before public and subordinates. The learned trial court recorded that dispute was over issuance of death certificate to one of the accused namely, Ramlal Singh. The learned trial court recorded that P.W.-1 was very much present at the time of the occurrence and it also appeared from his evidence that due to the occurrence, the Informant could not discharge his duty as he had to stop his work due to such activities of the accused persons. The same was also evident from the deposition of PW-4 (informant) who also deposed that he could not dispose of / discharge his duty at the time of incident. P.W.-4 Informant and P.W.-5 Investigating Officer have established the fact that the accused persons entered in the chamber-cum-office of the Informant which forced the Informant to stop his work in discharge of his office duty properly. The Investigating Officer has corroborated the prosecution case to the extent that the accused persons abused the Informant at his office and insulted him in front of public and his subordinates over issuance of death certificate and thus, created obstacle in discharging the official duty by the Informant, who is a public servant. After recording the aforesaid findings, the trial court held the accused persons guilty of offence under section 353,504/34 of IPC but acquitted for offence under section 448 of IPC. The findings of the learned trial court are as under: -

“On the basis of above observation, the court is of an opinion that out of five witnesses almost all of them have supported the fact about the abusement to informant by the accused persons while he was discharging his duty in his office-cum-chamber and they insulted him before public and subordinates. It further appears that the said dispute was over issuance of death certificate to one of the accused namely Ramlal Singh’s deceased wife. It further appears from the deposition of P.W.1 that he was very much present at the time of occurrence which is evident from para 1, 2 and 6 of his deposition. It further appears from para 7 that due to the present incident the informant could not discharge his duty as he had to stop his work due to such activities of accused. The same is evident from para 13 of the deposition of P.W. 4 where it is stated that he could not disposed of/ discharge his duty at the time of incident as by that time only the steps were filed. It further appears that P.W. 2 is hearsay witness but even he admits that he was told by the informant to call the police at his chamber which gives strong indication towards the circumstances as

alleged in the present case. He in para 9 has also admitted that accused Ramlal Singh use to come to the informant's office for getting the death certificate issued in the name of his deceased wife but the witness further admits that he reached at the place of occurrence after the occurrence took place which shows that except calling of the police as told by the informant, he did not see the occurrence. It further appears from deposition of P.W. 3 that he is also hearsay witnesses. The deposition of P.W. 4 and P.W. 5, the informant and I.O. respectively has established the fact as alleged in prosecutions case i.e. accused persons in the chamber-cum-office of the informant which forced the informant to stop his work in discharging his office duty properly. In further appears that the I.O. has corroborate the prosecution case to the extend that the accused persons abused the informant at his office and insulted him in front of public and his subordinate over issuance of death certificate and thus created obstacle in discharging the informant, who is a public servant, at his official duty. Thus, considering the above observation the court finds and hold that these accused persons are guilty for the offence committed under section 353, 504/34 of Indian Penal Code.”

23. The learned appellate court also considered the materials on record and recorded its findings in Para-5 and upheld the conviction of all the three accused persons. Para-5 reads as under:

“5.”

Thus, on perusal of the statements of the PW1, PW2 and PW3 it is clear that some occurrence of quarrel had taken place in the chamber of informant Executive Magistrate Manoj Jaiswal which was witnessed by his orderly Bhawani Das. Bhawani Das has clearly stated that when he entered into the chamber of his officer, he saw Banamali Choudhary, D.N. Choubey and one another quarrelling with the officer who were using filthy languages during quarrel. PW2 has also heard the uproar and when went on the place of occurrence and saw mob gathered there. Both the orderly peons PW1 and PW2 have stated that they called the police. The testimony of these witnesses may not be discorded as they are the usual witnesses who were posted as orderly in the office of the informant as well as in the office of SDO Chas. These witnesses have fully corroborated the fact that a uproar had taken place in the chamber of the informant and PW1 has clearly stated that he saw the accused persons quarrelling with the officers who were using filthy languages. The informant Manoj Jaiswal has also fully supported the case and has stated that D.N. Choubey President of Congress party of Chas town, Banamali Singh Ex. block Pramukh and one Ram Lal Singh came in the office and D.N. Choubey

asked him why he has rejected the application to issue the death certificate of his man. When he explained that there is difference of 9 months in the date mentioned in funeral certificate and in the application form and the reason of the death is paralysis for which medical certificate is required, D.N. Choubey sat on the chair and started abusing him. He prevented them but they did not stop and then he called the police and informed the matter to the Chas police station and submitted the written report. The informant has identified the form no.4 which is an application form for the issuance of death certificate, the funeral certificate and the affidavit annexed with it are marked Exbt.2, 3 and 4 respectively. On perusal of the form, it is clear that the application (form no.4) was filed for the issuance of death certificate of late Sanjharia Devi wife of Ram Lal Singh which is one of the accused of the case. In the application the date of death is written 19.4.02 while the funeral certificate was issued on 17.1.03. The witness has stated in his examination in chief that the reason of death is shown paralysis for which the medical certificate was required as per rule. During cross-examination the executive Magistrate has stated in para 36 that he has sent letter for the verification of funeral certificate and it was informed by the disciples of Marghat Baba that this funeral certificate was not issued by them. Thus, it is also clear from the documents that the information of death of Ram Lal Singh was submitted before the informant for the issuance of death certificate which was refused by the informant giving the reasons that it was against the rule and the funeral certificate was issued after the gap of 9 months of the date of death.

Among the appellants Devendra Choubey is the leader of congress party while Banamali Singh Choudhary was ex-Block Pramukh of Chas block and Ram Lal Singh is the person effected by the non-issuance of the death certificate of his wife late Sanjharia Devi. From the evidence of the witnesses the fact is well proved that the Executive Magistrate refused to issue the death certificate of the wife of appellant Ram Lal Singh for which he was being pressurised by the appellants who are the leaders. It has become trend in the society that the leaders put pressure on the officers to do legal and illegal works on their will and in case of refusal they use all the weapons to get the desired result. To scold, abuse or assault the public servant by the leaders is not uncommon in the society. In this case too, the appellants who are the leaders abused and quarrelled with the Executive Magistrate who is a public servant. The informant has clearly stated that they said him "Sale Bahut Kanoonchi Banta Hai" and quarrelled with him and deterred him from doing the office work. The witnesses have fully supported the case of the prosecution. PW1 has clearly stated that he saw the accused persons quarrelling with the officer using filthy languages and PW2 has also stated that he heard

the uproar and went to the chamber of Sri Manoj Jaiswal and saw mob gathered there. The evidence is sufficient to prove the fact that the accused persons quarrelled with the Executive Magistrate and abused him in furtherance of their common intention for non-issuance of the death certificate by the Executive officer and the offence u/s 353 and 504 IPC is well proved against the appellants beyond all reasonable doubt. None examination of the bench clerk and other concerned persons is not sufficient to disbelieve the case of the prosecution case.”

24. The provisions relevant for the purposes of this case are as under:-

Section 349 IPC: Force—

A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other’s body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other’s sense of feeling. Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

(First)— By his own bodily power.

(Secondly)— By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

(Thirdly)— By inducing any animal to move, to change its motion, or to cease to move.

Section 350 IPC: Criminal Force—

Whoever intentionally uses force to any person, without that person’s consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Section 351 IPC: Assault—

Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation. —Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Section 353 IPC: - Assault or criminal force to deter public servant from discharge of his duty—

“Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public

servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Section 504 IPC: - 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.

25. The basic ingredients of Section 353 of the IPC: -

- i) There must be assault or use of criminal force;
- ii) Such assault or use of criminal force must have been made on a public servant; and
- iii) It must have been on a public servant-
 - (a) while he was acting in the execution of his duty; or
 - (b) with intent to prevent or deter him from discharging his duty; or
 - (c) in consequence of anything done or attempted to be done by him in the discharge of duty.

26. The basic ingredients of Section 504 of the IPC: -

- i) Intentional insult.
- ii) The insult must be such as to give provocation to the person insulted.
- iii) Intention that such provocation should cause, or knowledge that such provocation was likely to cause, the person so insulted to break the public peace or to commit any other offence.

27. Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault under section 351 IPC.

28. The above definition of assault under section 351 IPC, interalia, provides that when a gesture is made to any person knowing that the person is going to apprehend that he who made such gesture is going to use criminal force on that person is said to have committed assault. Section 353 IPC covers both, use of criminal force or assault. According to explanation thereto mere words do not amount to an assault, but the words which a person uses may give to his gestures or preparation such a

meaning as may make those gestures amount to an assault.

29. The Hon'ble Supreme Court in the case of *Manik Taneja (supra)* has held the essential ingredients of the offence under Section 353 IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. In the said case it was found that there was absolutely nothing on record to show that the appellants had either assaulted the respondents or used criminal force to prevent the second respondent from discharging his official duty. The passage from the judgement is quoted as under:-

“A reading of the above provision shows that the essential ingredients of the offence under Section 353 IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the respondents or used criminal force to prevent the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, the ingredients of the offence under Section 353 IPC are not made out.”

30. In the present case, it is the case of the petitioner during the course of argument that no force/criminal force was used and hence ingredients of section 353 IPC were not satisfied.

31. This Court finds that although there was no use of criminal force but Section 353 IPC deals with crime arising out of assault also. It uses the words *assault or use of criminal force*. Considering the basic ingredients of the definition of 'assault' under section 351 IPC this Court is of the considered view that if a person enters the office chamber of a public servant while the public servant is performing his official work and abuses and pressurizes the public servant to do a particular task in a particular manner to which the public servant is otherwise not agreeing or questions the public servant with regards to the manner he has discharged his official duty and thereby prevents the public servant to perform his official duty and escalates the situation to such an extent that

the public servant is compelled to call the police to control the situation, the act comes within the meaning of assault as defined under section 351 IPC and consequently, offence under section 353 IPC is made out . Actual use of criminal force is not a condition precedent to attract section 351 and consequently attract section 353 of IPC. Apprehension in the mind of the victim about of use of criminal force created by gesture of the accused is sufficient. Such apprehension is reflected by the action, reaction and follow up action of the victim to tackle the situation and one such action is to call police to handle the situation when the public servant fails to persuade the accused person.

32. In the present case there are concurrent findings based on materials on record that the accused persons abused the informant while he was discharging his duty in his office-cum-chamber and they abused and insulted him before public and subordinates and the informant was pressurized to issue death certificate which the informant was otherwise not agreeable to issue explaining the reasons. The dispute was over issuance of death certificate to one of the accused namely Ramlal Singh's with respect to his deceased wife and due to the incident, the informant could not discharge his duty as he had to stop his work due to such activities of accused. The fact has been well proved that the Executive Magistrate refused to issue the death certificate of the wife of appellant Ram Lal Singh for which he was being pressurised by the appellants. The accused persons quarrelled with the Executive Magistrate (informant) and abused him in furtherance of their common intention for non-issuance of the death certificate by the Executive officer. On the basis of the materials on record it is well proved that the accused created ruckus in the office chamber of the informant while he was discharging his official duty and abused the informant repeatedly tried to pressurise the informant in the matter of issuance of death certificate to which the informant was not agreeable. The crowd gathered in the office due to the acts and abuse by the accused persons who did not calm down in spite of repeated persuasion and ultimately the police had to be called who

arrested the accused from the place of occurrence. Considering the definition of assault as explained above, the facts reveal that assault was committed by the accused persons including the petitioner and hence offence under Section 353 of IPC was committed.

33. Though no arguments have been advanced with respect to the offence under Section 504 IPC, but this Court finds that the ingredients of offence under Section 504 IPC were also proved.

34. Accordingly, this Court is of the considered view that the judgement passed by the learned courts convicting the petitioner under section 353 and 504 IPC do not call for any interference in revisional jurisdiction of this Court. So far as the sentence is concerned, the appellate court has already taken a lenient view and reduced the sentence from 2 years to 6 months for each offence and this Court is not inclined to reduce the sentence any further considering the nature and the manner in which the offence has been committed.

35. So far as the judgements relied upon by the petitioner are concerned, they do not apply under the facts and circumstances of this case as explained below: -

- a. In the case of *Manik Taneja (Supra)* the FIR was lodged on the basis of posting a comment on the *Facebook* page of the traffic police and it was alleged that the accused obstructed the public duty of the complainant and his staff by publicly making baseless allegation. It was alleged that through such posting of derogatory comments on the *Facebook* page it amounted to threatening and criminal intimidation within the meaning of Section 503 of IPC. The FIR was registered for offence punishable under Section 353 and 503 of IPC. It was held that taking uncontroverted allegation the ingredients of offence under Section 353 were not made out and with respect to Section 503 of IPC it was observed that there was no intention on the part of the accused to cause alarm in the mind of the victim causing obstruction in discharge of his duty and as far as a comment posted on *Facebook* were concerned, it

appeared that it was a public firm made for helping public and the act of the accused posting comment on *Facebook* may not attract the ingredients of criminal intimidation under Section 503 of IPC. With respect to the basic ingredients of offence under Section 353 the Hon'ble Supreme Court held that posting a comment on the *Facebook* page of traffic police no offence under Section 353 of IPC was made out.

In the present case as explained above all the basic ingredients of section 353 and 504 IPC are present to sustain the conviction of the petitioner.

- b. In the judgment passed by the Hon'ble Bombay High Court in the case of *Amer Khan (supra)*, the perusal of First Information Report showed that the applicant had abused and threatened respondent and rushed on his person but there was no allegation against the applicant before the court that he has caused respondent any motion, change of motion or cessation of motion with the use of bodily power and it was held that on the face of it, it was not a case wherein any force was used and consequently application of criminal force did not arise. In the said case, the state stressed upon definition of "assault" under Section 351 of the IPC in order to submit that the act of the applicant of rushing on the person of respondent with abuses and threatening amounted to assault but such a plea was rejected by observing that it was alleged that applicant abused and threatened respondent by rushing on his person and except for the words spoken there was complete absence of any gesture as contemplated as Section 351 of IPC to constitute it to be an assault and even from report no apprehension was indicated to have been caused in the mind of respondent from the said act of applicant on rushing on his person because in response thereto respondent simply informed him that the action in question was being undertaken as per the directions of High Court. It was held that the contents of First Information Report thus

clearly show absence of any apprehension by the gestures caused to respondent. On the other hand, in the present case the basic ingredients of assault in terms of section 351 IPC and hence offence under section 353 IPC were well proved by the prosecution.

- c. In the judgement passed by *Hon'ble Punjab and Haryana High Court in the case of Jaswinder Singh (supra)* the Hon'ble Court observed in paragraph 7 that section 353 IPC clearly showed that if a public servant is while discharging his duties is attacked or any injury caused to the public servant in discharging of his duties or when any public servant was prevented or deterred from performing his duties or when any public servant assaulted or any criminal force used against the public servant while he is exercising his duties as such public servant, then only the above offence would be attracted. In the said case it was not the case of the prosecution that the accused caused hurt or assaulted the constable while he was performing his duties as public servant or with any intent to prevent him or deter him from discharging his duties and therefore, the Hon'ble Court was of the view that the necessary ingredients to attract section 332, 333, 353 IPC were not present in the case. The said judgment was passed in the fact situation where there was no allegation in the complaint that the police constable was prevented or deterred from performing his duty and there was no allegation that he was hurt while performing his duty. It has also been held that it depends on the fact of such case whether a public servant can be said to be discharged his duty and whether the offence have been committed when the public servant has been discharging his duties. It was not even the case of the prosecution in the said case that the accused had knowledge that the constable was performing his duty and therefore, it could not be said that the accused caused injury to the constable with an intent to prevent or deter the complainant from discharging his

duties. On the other hand, in the present case the intent as well as the act to prevent or deter the informant from discharging his duty have been duly proved.

d. In the judgement passed by Hon'ble Madhya Pradesh High in the case of *Harendrajeet Singh (supra)*, the basic ingredients of section 353 IPC have been considered and it has been held that in order to attract the offence, it is the duty of the prosecution to prove that there was assault or use of criminal force restraining public servant from performing his official duties or causing any act with intent to prevent or deter him from discharging his duty. In the said case, the complainant although was a public servant but he himself in his statement recorded before the court admitted that at the time of incident, he was not performing any official duty and appellant had not created any hurdle or deterred him from performing official duty. In the said factual background, it was held that the required ingredients of Section 353 of IPC were not available. On the other hand, in the present case the intent as well as the act to prevent or deter the informant from discharging his duty have been duly proved.

36. As a cumulative effect of the aforesaid findings, there is no merit in this revision petition calling for any interference in the conviction and sentence of the petitioner and accordingly this revision petition is dismissed.

37. Pending interlocutory application, if any, is disposed of.

38. Bail bond furnished by the petitioner is cancelled.

39. Let a copy of this Judgment be communicated to the concerned learned court below through "FAX/E-mail".

(Anubha Rawat Choudhary, J.)