

Court No. - 74

Case :- APPLICATION U/S 482 No. - 1861 of 2024

Applicant :- Ms Kritika Kaushik Alias Hanu And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ravi Anand Agarwal, Shreya Gupta

Counsel for Opposite Party :- Aravind Kumar Tripathi, Deepak Kumar Yadav, G.A., Laxmi Narayan Mishra, Rajrshi Gupta, Rizwan Ahamad

Hon'ble Saurabh Shyam Shamsery,J.

1. Heard Ms. Shreya Gupta, learned counsel for applicants, Sri Mithilesh Kumar, learned AGA for State and Sri Rizwan Ahamad, Advocate for Complainant.
2. The present application under Section 482 Cr.P.C. has been filed for quashing of entire proceedings of Complaint Case No. 3921 of 2023, under Sections 34, 108, 328, 344, 347, 384, 406, 500, 506, 511 IPC and summoning order dated 18.12.2023 passed by Additional Civil Judge (Senior Division)/ Additional Chief Judicial Magistrate, Court No. 4, Ghaziabad, whereby Applicant-1, Kritika Kaushik has been summoned under Section 406 IPC and Applicant-2, Naresh Kumar Kaushik has been summoned under Sections 504, 384 IPC.
3. In the present case Applicant-1 is daughter-in-law of Opposite Party No. 2 and Applicant-2 is father of Applicant-1.
4. Learned counsel for applicants submits that even contents of complaint and statements recorded under Sections 200 and 202 Cr.P.C. considered to be true, still ingredients of Sections 384, 504, 406 IPC are not made out and she refers relevant part of impugned order, which is reproduced hereinafter:

"पत्रावली का अवलोकन किया।

पत्रावली के अवलोकन से विदित है कि परिवादी ने अपने बयान अंतर्गत धारा-200 दं०प्र०सं० में कथन किया है कि दिनांक 06-11-2021 को परिवादी की पुत्रवधू कृतिका परिवादी के परिवार के आभूषण अपने मायके दिखाने भैया दूज के त्योहार पर ले गयी थी और जब वापस आयी तो जेवर

मांगने पर उसके द्वारा कहा गया कि यह जेवरात मायके भूल आयी है। दिनांक 11-11-2021 को परिवादी की पुत्रवधू के पिता नरेश कौशिक आये और परिवादी की पुत्रवधू और उसके पोते को अपने साथ ले गये। उक्तके बाद दिनांक 24-11- 2021 को नरेश कौशिक परिवादी की पुत्रवधू कृतिका व उसके दोस्त विकास शर्मा परिवादी के घर आये और परिवादी की पुत्रवधू अपने और अपने बेटे का सामान साथ में ले गयी। जाते समय नरेश कौशिक ने एक भारी बैग से परिवादी की पत्नी रेखा शर्मा को धक्का दिया जिससे उसकी हड्डियों में चोट लग गयी। दिनांक 03-07- 2022 को नरेश कौशिक अपने दोस्त विकास शर्मा की पत्नी और राजू शर्मा के साथ परिवादी के घर आये और परिवादी से बातचीत की। उसके बाद अचानक मीटिंग छोड़कर उसके घर के पड़ोतियों के दरवाजे खटखटाने लगे और परिवादी व उसके घर वालों का नाम लेकर गंदी गंदी गालियां देने लगे। तब नरेश कौशिक से कहा कि आप बैठकर बातचीत से कोई समझौता क्यों नहीं कर लेते। इस पर नरेश कौशिक ने एक करोड़ रुपये समझौते में मांगे और तभी जेवरात वापस करने की बात की। परिवादी का यह भी कथन है कि माननीय उब न्यायालय दिल्ली का आदेश है कि परिवादी की बहू कृतिका कौशिक अपने बच्चे को अमेरिका में रखेगी व अपने पति से मिलने देगी। परिवादी ने अपने परिवाद के कथनों में माननीय उब न्यायालय दिल्ली के आदेश की प्रति दाखिल की है। उक्त के सम्बन्ध में जांच आख्या अंतर्गत धारा-202 दं०प्र०सं० न्यायालय द्वारा सम्बन्धित थाने से मांगी गयी है।

उक्त घटना के सम्बन्ध में जांच आख्या अंतर्गत धारा-202 दं०प्र०सं० में जांचकर्ता द्वारा आख्या दी गयी है कि विपक्षी नरेश कौशिक से बातचीत करने पर उन्होंने कोई भी सहयोग नहीं किया, जबकि परिवादी द्वारा अपने बयानों का जांच आख्या में कथन किया गया है। उक्त पुलिस जांच आख्या परिवादी व उसकी ओर से परीक्षित साक्षीगण के साक्ष्य के आधार पर प्रथम दृष्टया विपक्षी नरेश कुमार कौशिक को परिवादी व उसकी पत्नी को गाली-गलौच करने व 1 करोड़ रुपये समझौते में मांगने पर अंतर्गत धारा-504,384 भा०दं०सं० व कृतिका कौशिक को परिवादी की पत्नी के जेवर ले जाने व वापस न करने के सम्बन्ध में अंतर्गत धारा-406 भा०दं० सं० में तलब किये जाने योग्य है।

आदेश

अभियुक्तगण नरेश कुमार कौशिक को अंतर्गत धारा 504,384 भा०दं०सं० व कृतिका कौशिक को अंतर्गत धारा 406 भा०दं०सं० में तलब किया जाता है। परिवादी धारा 204 (2) दंड प्रक्रिया संहिता में वर्णित साक्षी सूची की पैरवी अविलंब करें। तत्पश्चात अभियुक्तगण को सम्मन दिनांक-49.01.2024 को पेश हो।"

5. Learned counsel further submits that date mentioned in complaint, statements recorded under Sections 200 and 202 Cr.P.C. as well as in Police investigation report is different as such even ingredients under Section 406

IPC is not made out. In support of her submissions she placed reliance on a Coordinate Bench judgment of this Court in **Sanjeev Rawat alias Teetu and another vs. State of U.P. and another**, Neutral Citation No. 2023:AHC:179057 and a judgment passed by Supreme Court in **M/s Eicher Tractor Ltd. and others vs. Harihar Singh and another**, 2008(16) SCC 763.

6. Per contra, learned AGA as well as learned counsel appearing for Complainant have supported the impugned order and submit that all the allegations are supported by statements recorded during proceeding and there are reasons assigned by Trial Court concerned that there are sufficient ground to proceed.

7. In order to appreciate rival submissions the Court takes note of a recent judgment passed by this Court in **Sanjay Gupta alias Sanju Mohan vs. State of U.P. and another**, Neutral Citation No. 2024:AHC:105492 wherein ingredients to commit offence under Section 384 IPC were discussed in detail and Court has also placed reliance on two judgments passed by Supreme Court in **Dhananjay @ Dhandnjay Kumar Singh Vs. State of Bihar and others**, (2007)14 SCC 768 and **Salib @ Shalu @ Salim vs. State of U.P. and others**, 2023 INSC 687. Relevant paragraphs of **Sanjay Gupta alias Sanju Mohan (supra)** are reproduced hereinafter:

“10. In order to appreciate, whether contents of Section 387 IPC are made out or not, it would be appropriate to reproduce relevant part of judgments passed by Supreme Court in Dhananjay @ Dhandnjay Kumar Singh Vs. State of Bihar and others, (2007)14 SCC 768 and Salib @ Shalu @ Salim vs. State of U.P. and others, 2023 INSC 687:

Dhananjay @ Dhandnjay Kumar Singh (Supra)

“5. Section 384 provides for punishment for extortion. What would be an extortion is provided under Section 383 of the Penal Code in the following terms:

"383. Extortion.--Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits 'extortion'."

6. A bare perusal of the aforementioned provision would demonstrate that the following ingredients would constitute the offence:

1. The accused must put any person in fear of injury to that person or any other person.

2. The putting of a person in such fear must be intentional.

3. The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security.

4. Such inducement must be done dishonestly.

7. A First Information Report as is well known, must be read in its entirety. It is not in dispute that the parties entered into transactions relating to supply of bags. The fact that some amount was due to the appellant from the First Informant, is not in dispute. The First Information Report itself disclosed that accounts were settled a year prior to the date of incident and the appellant owed a sum of about Rs.400-500 from (sic) Gautam Dubey (sic).

8. According to the said Gautam Dubey, however, a sum of Rs.1500/- only was due to him.

9. It is in the aforementioned premise the allegations that Gautam Dubey and the appellant slapped the first informant and took out Rs.1580/- from his upper pocket must be viewed.

10. No allegation was made that the money was paid by the informant having been put in fear of injury or putting him in such fear by the appellant was intentional.

11. The first informant, admittedly, has also not delivered any property or valuable security to the appellant.

12. A distinction between theft and extortion is well known. Whereas offence of extortion is carried out by overpowering the will of the owner; in commission of an offence of theft the offender's intention is always to take without that person's consent.

13. We, therefore, are of the opinion that having regard to the facts and circumstances of the case, no case under Section 384 of the Penal Code was made out in the first information report."

Salib @ Shalu @ Salim (supra)

"21. "Extortion" has been defined in Section 383 of the IPC as follows:—

"Section 383. Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person

any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits 'extortion.

Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion."

22. So from the aforesaid, it is clear that one of the necessary ingredients of the offence of extortion is that the victim must be induced to deliver to any person any property or valuable security, etc. That is to say, the delivery of the property must be with consent which has been obtained by putting the person in fear of any injury. In contrast to theft, in extortion there is an element of consent, of course, obtained by putting the victim in fear of injury. In extortion, the will of the victim has to be overpowered by putting him or her in fear of injury. Forcibly taking any property will not come under this definition. It has to be shown that the person was induced to part with the property by putting him in fear of injury. The illustrations to the Section given in the IPC make this perfectly clear.

23. In the aforesaid context, we may refer to the following observations made by a Division Bench of the High Court of Patna in Ramyad Singh v. Emperor Criminal Revision No. 125 of 1931 (Pat):-

"If the facts had been that the complainant's thumb had been forcibly seized by one of the petitioners and had been applied to the piece of paper notwithstanding his struggles and protests, then I would agree that there is good ground for saying that the offence committed whatever it may be, was not the offence of extortion because the complainant would not have been induced by the fear of injury but would have simply been the subject of actual physical compulsion."

It was held:-

“It is clear that this definition makes it necessary for the prosecution to prove that the victims Narain and Sheonandan were put in fear of injury to themselves or to others, and further, were thereby dishonestly induced to deliver papers containing their thumb impressions. The prosecution story in the present case goes no further than that thumb impressions were ‘forcibly taken’ from them. The details of the forcible taking were apparently not put in evidence. The trial Court speaks of the wrists of the victims being caught and of their thumb impressions being then ‘taken’ The lower Courts only speak of the forcible taking of the victim's thumb impression; and as this does not necessarily involve inducing the victim to deliver papers with his thumb impressions (papers which could no doubt be converted into valuable securities), I must hold that the offence of extortion is not established.”

24. Thus, it is relevant to note that nowhere the first informant has stated that out of fear, she paid Rs. 10 Lakh to the accused persons. To put it in other words, there is nothing to indicate that there was actual delivery of possession of property (money) by the person put in fear. In the absence of anything to even remotely suggest that the first informant parted with a particular amount after being put to fear of any injury, no offence under Section 386 of the IPC can be said to have been made out.” (Emphasis supplied)

11. I have carefully perused the contents of complaint, statements recorded under Sections 200 and 202 Cr.P.C. as well as impugned order. As referred in Dhananjay @ Dhandnjay Kumar Singh (supra) and Salib @ Shalu @ Salim (supra), in order to make out a case of extortion, one of the essential ingredient is to deliver any property or valuable security being under threat by Complainant to accused, whereas in the present case such ingredient is absolutely missing as it was not a case of Complainant that he actually handed over Rs. 5 lacs to accused.

12. The nature of allegation is that Complainant was put under threat of fear of death that he has to pay Rs. 5 lacs to run the business of Gutkha but admittedly no amount was paid. A reference be taken of statement of Complainant and other witnesses being part of present order that, "बंदूक तान दी और बोले कि अगर अपना गुटखा चलाना हो तो मुझे 5,00,000 रुपये हर महीने दो".

13. The words used in Section 387 IPC, i.e., “in order to the committing of extortion” is used for an act committed during act of extortion and for that act of extortion has to be concluded in terms of Section 383 IPC.

14. In aforesaid circumstances, since in the present case act of ‘extortion’ was not concluded as Rs. 5 lacs was not paid, therefore, offence under

Section 383 IPC was not made out and consequently offence under Section 387 IPC was also not made out. [See, Dhananjay @ Dhandnjay Kumar Singh (supra) and Salib @ Shalu @ Salim (supra)]”

8. As referred above, in order to prove the offence of extortion there must be delivery of amount demanded. However, as clearly reflected from statements of Complainant as well as witnesses the alleged demand of Rs. 1 crore was never materialized as it was never handed over by Complaint to applicants. As such, offence under Section 383 IPC punishable under Section 384 IPC is not made out.

9. In order to appreciate the submission with regard to offence under Section 504 IPC, the Court takes note of a judgment passed by Supreme Court in **Mohammad Wajid and another vs. State of U.P. and others, 2023 INSC 683** wherein the Court considered ingredients of Section 503 IPC and relevant paragraphs of judgment are mentioned hereinafter:

“23. Chapter XXII of the IPC relates to Criminal Intimidation, Insult and Annoyance. Section 503 reads thus:-

“Section 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 resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.”

Section 504 reads thus:-

“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.”

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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 self control 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.” (Emphasis supplied)

10. As discussed above, in the statements of Complainant as well as witnesses the nature of threat is not specified that whether it will fall within the parameters that person to whom insult was made was likely to commit an act which would provoke breach of peace. As such, ingredients of Section 504 IPC are also not made out.

11. Lastly, this Court proceed to consider the argument with regard to offence under Section 406 IPC, i.e., criminal breach of trust. There is merit in the argument of learned counsel for applicant that date of offence of criminal breach of trust are different, therefore, the very basis of offence does not survive. Still this Court further proceed that even the statements considered to be true, can it be a case of criminal breach of trust since basis element of entrustment is missing. In this regard, it would be apposite to refer a judgement passed by Supreme Court in **Vijay Kumar Ghai and others vs. State of West Bengal and others, (2022) 7 SCC 124** wherein the ingredients for criminal breach of trust were discussed and relevant paragraphs thereof are mentioned hereinafter:

"27. Section 405 of IPC defines "Criminal Breach of Trust" which reads as under: -

"405. Criminal breach of trust.--Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

The essential ingredients of the offence of criminal breach of trust are:-

- (1) The accused must be entrusted with the property or with dominion over it,*
- (2) The person so entrusted must use that property, or;*
- (3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,*
 - (a) of any direction of law prescribing the mode in which such trust is to be discharged, or;*
 - (b) of any legal contract made touching the discharge of such trust.*

28. "Entrustment" of property under Section 405 of the Indian Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, "in any manner entrusted with property'. So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of "trust'. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.

29. The definition in the section does not restrict the property to movables or immovable alone. This Court in R K Dalmia vs Delhi Administration, (1963) 1 SCR 253 held that the word "property' is used in the Code in a much wider sense than the expression "moveable property'. There is no good reason to restrict the meaning of the word "property' to moveable property only when it is used without any qualification in Section 405.

30. In Sudhir Shantilal Mehta Vs. CBI, (2009) 8 SCC 1 it was observed that the act of criminal breach of trust would, Inter alia mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust."

12. In view of above, since ingredients of above referred offences are not made out, therefore, it is a fit case wherein inherent power under Section 482 Cr.P.C. can be exercised in the light of para 102 of judgment passed by

Supreme Court in **State of Haryana v. Bhajan Lal**, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426. For reference para 102(7) of **Bhajan Lal (supra)** is reproduced hereinafter:

“(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13. Since Applicant-1 has already initiated criminal proceedings against her husband and in-laws, therefore, it is a case wherein opposite parties have initiated present proceedings for wreaking vengeance.

14. The outcome of above discussion is that, the application is allowed. Entire proceedings of Complaint Case No. 3921 of 2023 as well as summoning order dated 18.12.2023 passed by Additional Civil Judge (Senior Division)/ Additional Chief Judicial Magistrate, Court No. 4, Ghaziabad, are hereby quashed.

15. Registrar (Compliance) to take steps.

Order Date :- 19.07.2024

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