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Court No. - 92

Case :- APPLICATION U/S 482 No. - 37828 of 2016

Applicant :- Prof. Prahlad Kumar

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

Counsel for Applicant :- Gaurav Kakkar

Counsel for Respondent :- G.A., A.P. Singh

Hon'ble Prashant Kumar,J.

1. Heard Sri Gaurav Kakkar, learned counsel for the applicant, Sri Aishwarya Pratap Singh and Sri Avaneesh Tripathi, learned counsel for O.P. No.2 and Sri S.D. Pandey and Sri S.K. Chandraul, learned A.G.A.s for the State-O.P. No.1.

2. This is a case where a Professor had to pay a very heavy price for asking an Assistant Professor to take classes and teach properly. He was made an accused in a frivolous and malicious criminal case and had to face trial for last eight years, and further had to face humiliation, stigma, for no fault of his own, and on the other hand, the complainant, by misusing the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred as 'the S.C./S.T. Act'), had been using as a weapon and threatened the other seniors from taking any action against her.

3. The instant application under Section 482 Cr.P.C. has been preferred by the applicant praying for quashing charge sheet dated 08.10.2016 under Section 354C, 504, 506 of IPC and under Section 3(2) (va) of the S.C./S.T. Act as well as entire proceedings of Special Sessions Trial No.127 of 2016 arising out of Case Crime No.701 of 2016,

Police Station-Colonelganj, District-Allahabad pending in the Court of Special judge, SC/ST Act, Allahabad.

FACTUAL MATRIX

4. The facts of the case in brief are that O.P. no.2 namely, Deep Shikha Sonkar has joined as Assistant Professor in Department of Economics in University of Allahabad in July, 2013 and at that time, Professor Jagdish Narain was the then Head of Department. Thereafter, the present applicant took charge as the Head of Department of Economics on 14.02.2014. On 05.01.2015, the then Dean, Faculty of Commerce, Professor Jagdish Narayan prepared a report with respect to newly appointed teachers for the period commencing from May, 2013 to February, 2014. In the said report, in respect of O.P. no.2 it was mentioned as follows:

Name	Work	Conduct	Behaviour
Ms. Deepshikha Sonker	Less satisfactory	Rude	Not Good

5. Being annoyed with the aforesaid, O.P. no.2 filed multiple complaints as mentioned hereunder:

1st Complaint

(i) FIR was lodged on 01.10.2015 which was registered as Case Crime no.708 of 2015, under Section 65, 66 of the I.T. Act at Police Station-Colonelganj, District-Allahabad in which the applicant was not named but vague allegations were made against him in the body of the FIR.

2nd Complaint

(ii) The second complaint was made to the Womens' Advisory Board on 14.01.2016 wherein she alleged about receiving emails from two anonymous addresses in which image of her supervisor Professor G.C. Tripathi and Professor U.S. Rai was tarnished, the said complaint was also regarding her facebook account being hacked and someone downloading her photographs from her facebook account.

3rd Complaint

(iii) The third complaint was made to Vice Chancellor on 19.01.2016 wherein it was stated that her evaluation report which was given by Professor Kurwar about her work being not satisfactory from July, 2013 to February, 2014 was deliberate only to ensure that she doesn't get confirmed. In the said complaint, she also alleged that the present applicant (Professor Prahlad Kumar), after becoming the Head of Department was trying to get close to her and also used to call her in his room and make her sit for long hours for no reason.

4th Complaint

(iv) O.P. no.2 filed a fourth complaint on 13.02.2016 with the **Committee for Complaints Against Sexual Harassment** (hereinafter referred as 'CCASH') against Professor Prahlad Kumar (present applicant), wherein she alleged that initially she was kept in the Committee for alumni work but later on was removed. She also stated that she was scolded by the applicant in the corridor of the department.

6. On 16.02.2016 the applicant relinquished the office of the Head of Department for Economics as the Head of Department by rotation for two years as per prevalent norms of University of Allahabad. In his place Professor Man Mohan Krishna took charge as the Head of Department.

7. All the three complaints (2nd, 3rd and 4th Complaints) were dealt in detail by the Committee for Complaints Against Sexual Harassment and a exhaustive report with respect to the allegation made by O.P. no.2 was submitted by the six members committee. In-depth inquiry was done by CCASH in pursuance of the written instruction by the Vice Chancellor. It dealt with the allegations made by O.P. no.2 regarding hacking of her facebook account and also observed that when the facebook account of O.P. no.2 was seen by the crime branch it was reported that her account was never hacked, in fact she did not put privacy setting option. The Committee in its report also clearly mentioned that the photographs of O.P. no.2 were never

found in the University library. The relevant portion of the report is as follows:-

“c) Hacking of her facebook account

Ms. Sonkar’s laptop was opened before the CCASH. Her Facebook account was seen by an officer of the crime branch. It was reported by him that her account was not hacked. She had not put “privacy settings” option, due to which someone downloaded her pictures, and she states that he pictures were put on the compute screens of the Central Library. Upon enquiry by the CCASH Chair person, the librarian informs that he did get a phone call from Prof. Rai asking about this, 3-4 months back, he rushed upstairs to the reading room to check if the photographs were there, but neither he nor any of the library staff had seen the pictures. An enquiry about this issue was made from the 20 research scholars of the department, who frequent the library, but all of them denied seeing any such thing. Reply of the Librarian is annexed as Annexure-5.

d) Anonymous Emails

These emails have a genesis. The emails that troubled Ms. Sonkar the most were sent on 22nd and 23rd Sept 2015. The first email bears a subject “How Dr. Deep Shikha Sonkar is so special to Dr US Rai”. The second one sent on 22nd Sept bears the subject “Official complaint of Dr. Deep Shikha Sonkar” and the third one sent on 23rd Sept 2015 bears the subject “Re: Official complaint of Deep Shikha Sonkar of Economics department”. The subject mentions her name but the 22 September mail is addressed to the Vice Chancellor of Allahabad University and was sent at 5.10 am from ‘kumarnehal83@gmail.com’ on the same date. It was later on copied to Ms. Sonkar also at 5:46 pm. The complaints sent on 23rd September is written to Prof. G.C. Tripathi and is copied to Prof. Prahlad, Prof. Satya Narain, Registrar, AU, Prof. Purwar and Prof. Tripathi. It is not sent to Ms. Sonkar and the complaints are about Prof. U.S. Rai and Prof. G.C. Tripathi Annexure-B. To this email an automated reply from Prof. Prahlad’s account was received by the anonymous emailer. It is perplexing to note that immediately the anonymous emailer forwarded the automated reply of Prof. Prahlad to Ms. Sonkar. This email also on the subject, contains Ms. Sonkar’s name but has no content against her. All emails are appended as Annexure G. The way Ms. Sonkar was forwarded this automated message of an ambiguous emailer indicates

that the emailer is known to her. Any one would normally refrain from using any content sent by some unknown address. Ms. Sonkar is not only using his automated reply but is also imputing him of foulplay. Whereas the Committee has crosschecked and found that his id sends the same reply to all emails received. It signifies nothing concrete.”

5th Complaint

8. The complainant/O.P. no.2 lodged the FIR on 04.08.2016, which was registered as Case Crime No.701 of 2016 under Section 354C, 504, 506 IPC and under Section 3(2)(va) of the S.C./S.T. Act. The translated portion of the FIR is as follows (approved by learned counsel for O.P. no.2):

*“Complainant/O.P. no.2 is an Assistant Professor in the Economics Department of University of Allahabad against whom, **Prof. Prahlad** and some other senior professors, had personal grudge from the very beginning as she belongs to Scheduled Caste and unfortunately, they used to harass her in various ways. Being aggrieved, she had lodged complaints against them before the University, Commission for the Scheduled Castes and Scheduled Tribes as well as National Women Commission, and since then **Prof. Prahlad Kumar** and present Head of Department Man Mohan Krishna **have been insulting and harassing her**. On 04.08.2016 at about 12.45 P.M., she was called upon by the Head of Department (Man Mohan Krishna) in his chamber and when she entered his chamber, she found that along with Prof. Man Mohan Krishna, **Prof. Prahlad** and Prof. Javed Akhtar were sitting there. Prof. Man Mohan Krishna using words relating to her caste scolded her, kept her standing for an hour and kept on gazing her and also used filthy words in between. The complainant sought permission to leave again and again, but she was not permitted to leave and she was threatened by saying that as she belonged to the scheduled caste, she should stay within her limits. With the aforesaid incident, the complainant felt herself extremely humiliated, victimized and insecure. Since the date when the complainant has lodged complaint against her harassment, **Prof. Prahlad Kumar**, Prof. Man Mohan Krishna and Javed Akhtar have been **pressuring her to withdraw the complaint and they used to send many anti-social elements before her and are harassing her in various ways.**”*

6th Complaint

9. O.P. no.2 filed yet another complaint before the Committee for Complaints Against Sexual Harassment on 05.08.2016 with respect to the same incident which happened on 04.08.2016. The allegations made in the FIR dated 04.08.2016 were reiterated therein.

10. Thereafter, the Investigating Officer recorded the statement of O.P. no.2 under Section 161 Cr.P.C.on 05.08.2016. The relevant portion of the statement reads as under:-

*“Prof. Javed Akhtar, Prof. Man Mohan Krishna and **Prof. Prahlad Kumar have been harassing** the complainant since 2013. **All the three of them, stared her and kept her standing for an hour.** They said that she belongs to Scheduled Caste and she can’t do anything. She could not sit along with them and she would be beaten by chappal. She is not even worthy of talking with them. **All the three of them told her, “I am your Head, I will not let you do the job and you will not be able to stay here”.** Prior to this, she had lodged an FIR in 2015, despite this, all the three of them have been harassing her and she is feeling insecure. They always **use filthy words** against her and say that she is elusive, lodges false FIRs and her character is not good.”*

11. On 14.09.2016, the statement of O.P. no.2 was recorded under Section 164 Cr.P.C. in which she stated as follows:

*“On 04.08.2016 at about 12.45 P.M. when she was doing enrollment work in the University, a peon informed her that the Head was calling her in his room. At 1.00 P.M. she went there, where Man Mohan Sir, **Prahlad Sir** and Javed Sir were sitting. When she started sitting, they asked her to keep standing. They further said that when will she understand as she had been told for the last five months and what should be done with her to make her understand. They further asked her that why she is not withdrawing the case. Prof. Javed said that hadn’t she belonged to Scheduled Caste, she would not have been selected. Prof. Prahlad told that she had forgotten her limits and she is very fond of going to courts. Prof. Man Mohan said that what else can be expected from the people of her caste, no one would listen to her as she has been there for only three years and what is her status, he will*

ruin her character. She had been selected because of her looks and would she be able to do the service. He further said that if she does not behave, he would not let her to stay there. He also said that she is despicable and had picked articles of enrollment from his room. He further said that she will sit in the room of Prof. Javed and do her work there. She further stated that, she had earlier lodged FIR against them and they were asking her to withdraw the same.”

12. The complaint made to the Vice Chancellor by O.P. no.2 was thoroughly examined by a five member Committee of CCASH and after taking evidence of the witnesses of O.P. no.2, CCASH vide its report dated 05.10.2016 concluded that the complaint is an attempt to malign the high reputation and impeccable image of the concerned Professors. The findings of the report dated 05.10.2016 is being quoted below :-

“

Findings

In the light of her failure to respond to the questionnaire sent by the CCASH and the responses given by the eight members of the department to the queries by the CCASH, which ran contrary to the allegations made by Ms. Sonkar in her complaint. The committee is led to conclude:

That Ms. Sonkar has no evidence to substantiate her allegations.

That the reported incident has taken place in full public view so the evidence of those present becomes very crucial in verifying and finding about the truth of the incident.

That Ms. Sonkar neither responded nor led any evidence. All the persons examined by the CCASH have strongly denied the contents of the complaint.

That the said complaint by Ms. Sonkar is entirely frivolous. In fact her own conduct in the department, where she fails to cooperate with the Head and comply with his various orders reflects an attitude of insubordination and creates serious issues of defiance of authority.

In response to the question about the general behavior of these three professors all the persons who responded to the questionnaire have in substance written that the behaviour of these three Professors is courteous, cooperative, polite and very good. No previous incident of any misconduct or rude behavior of these three professors was

brought to the notice of the CCASH except the earlier complaint by Ms. Sonkar against Professor Prahlad Kumar which was found to be frivolous and false.

It is pertinent to mention that as reported by the HOD Prof. M.M. Krishna that soon after she left his room he received a call from mobile number 8423857510 by one Sri Rajesh Tripathi, subscriber of the said number using un-parliamentary language, and threatening him and later the said Sri Tripathi visited the department along with 4-5 unknown persons and threatened Professor Javed Akhtar and Professor Prahlad Kumar saying, “ in case any harm comes to Ms. Sonkar the consequences will be dire....” This act and conduct of Ms. Sonkar was highly condemnable.

In the light of her such continuous subversive behavior and her inability to substantiate her allegations on the three named professors, the CCASH also concludes that her complaint is merely an attempt to malign the high reputation and impeccable image of the concerned Professors.

Such frivolous complaints not only malign the reputation of the department in particular but also of the institution, the University of Allahabad at large.”

13. The CCASH report found that it was Prof. S.K. Chaturvedi, who was present in the HOD's room and not Prof. Prahlad Kumar as stated in the complaint. **In fact, at that time, Prof. Prahlad Kumar** was taking a class. The statement of Prof. S.K. Chaturvedi recorded before the Chairperson, CCASH on 17.08.2016 is quoted below :-

“1. Pl. narrate in your own words what you saw in the department at mid-noon when Ms. Sonkar entered the room of Prof. M.M. Krishna. On 04.08.2016 at 12:45 when Ms. Sonkar entered the room of Prof. M.M. Krishna, I was there. Ms. Sonkar was offered a seat and soon as she sat, a heated discussion ensued between Ms. Sonkar and the HOD regarding allotment of rooms, which was done by a Committee under my Chairmanship. Ms. Sonkar was insisting that unless the facilities demanded by her and other juniors are provided, the allotment of rooms cannot be taken as final. The HOD took the stand, that providing the facilities does not come under his jurisdiction.

2. Did any of the Prof. Abuse her or uttered any caste based remarks or any bad word : ~~Yes/No~~

If yes then specify.

Not in my presence.

3. Was she kept standing in his room. ~~Yes/no~~

4. Name the teachers present in the room of Prof. M.M. Krishna at the time this incident took place?

I was in Prof. Krishna's room for barely 20 minutes, after that I left as I had a class in the next period and Ms. Sonkar should accept the allotment done. The rest of the argument was merely repetitive. However, I left after about 20 minutes as I had a class in the next period.

5. Were all the three teachers present in his room when she entered. ~~Yes/No~~

When she entered only Prof. M.M. Krishna myself were there.

6. Were Prof. Prahlad and Prof. M.M. Krishna and Prof. Javed stalking her? ~~Yes/No~~

I don't know.

7. Writ about the general behavior of all these teachers in the department?

Satisfactory. I have no complaints."

14. The I.O. submitted charge-sheet against the applicant and others under Sections 354C, 504, 506 IPC and under Section 3(2)(va) of the S.C./S.T. Act. On 18.11.2016, the trial court has taken cognizance and issued summons in the matter.

15. Thereafter, the reports of the Committee against the sexual harassment of women dated 16.03.2016 and 5.10.2016 was put up before the Executive Council, who vide Resolution No.08/42 dated 16.12.2016 conferred its approval. The relevant portion of the resolution dated 16.12.2016 is quote below:-

"The Council unanimously accepted the CCASH Report. Some members also questioned as to why some action has not been recommended for bringing a case or disciplinary action against Deepshikha Sonker who has been levelling false and fictitious

allegations against senior and reputed teachers of the Economics Department and university functionaries including then Head and such an act by the lady teacher is bringing disrepute to the Department and to the University. Honorable Vice-Chancellor on this informed the Council that as the present case is under consideration in the honorable High Court, it would not be proper to taken any decision till the case is finally decided there.”

16. The applicant by means of present application has challenged the cognizance/summoning order dated 18.11.2016 passed by Special Judge, S.C./S.T. Act, Allahabad on charge-sheet dated 8.10.2016 submitted under Section 354C, 504, 506 IPC and under Section 3(2)(va) of the S.C./S.T. Act in Case Crime No.701 of 2016, Police Station-Colonelganj, District-Allahabad.

ARGUMENTS ON BEHALF OF THE APPLICANT

1st Argument

17. Learned counsel for the applicant submitted that the FIR in question is tainted with malafides. The informant earlier had failed in her many attempts to harass the applicant by means of the complaints dated 28.09.2015, 19.01.2016 and 13.02.2016. The FIR, lodged in the present case, was yet another tool used by O.P. no.2 to harass and victimize the applicant. The said proceedings which arise from the vexatious FIR is nothing but gross abuse of process of the Court, hence, is liable to be quashed.

18. To buttress his argument, he has placed reliance upon paragraph 12 of the judgment passed by the Hon'ble Supreme Court in the matter of **Mahmood Ali and others vs. State of U.P. and others**¹, which reads as under :

“12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed

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essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance etc, then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the state of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.....”

2nd Argument

19. Even if the averments made in the FIR and the statements of the complainant/O.P. no.2 recorded under Sections 161 and 164 Cr.P.C. (supra) are relied upon, then also the basic ingredients for commission of offence under Section 354C IPC do not stand spelled out, inasmuch as, there is nothing in the statements to indicate that the complainant was being watched or her image was being captured when she was engaged in a private act.

20. Section 354C IPC is reproduced hereunder:

“354C. Voyeurism.-Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first

conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

21. He further submitted that the allegations made in the FIR and the statement given by the informant under Section 164 Cr.P.C. by no stretch of imagination would attract the provisions of Section 354C of IPC, inasmuch as, there is nothing in the FIR or statement given by complainant/O.P. no.2 to indicate that the applicant watched her or captured her impugned when she was engaged in a private act, as such, no offence of voyeurism is even remotely made out against the applicant. The submission of charge sheet against the applicant under Section 354C IPC is wholly unreasonable and was nothing but the mechanical act of the I.O. who has submitted the charge sheet without appreciating the evidence on record. The court below has also committed gross illegality by taking cognizance against the applicant with respect to the offence under Section 354C IPC even though the basic ingredients of the offence were not spelled out.

22. He contended that a plain reading of Section 354C of IPC exhibits that the allegations levelled by the complainant against the applicant do not fall under the ambit of this Section as there is no allegation of the applicant watching or taking her image in a private act, where she would usually have the expectation of not being observed or was disseminating such image.

3rd Argument

23. He further submitted that the allegations made by the informant in her statement under section 164 Cr.P.C. stands completely falsified by the detailed report of the CCASH dated 05.10.2016 and in view of such serious contradictions and discrepancies the benefit of doubt is liable to sway in

favour of the applicant more so due to the reason that O.P. no.2 earlier had also initiated false and frivolous complaint against the applicant and allegations made therein could never been substantiated by her.

24. He further submitted that if CCASH is to be believed that Prof. Prahlad Kumar was not even there, he was taking a class and this fact was deposed by Prof. S.K. Chaturvedi and the same found place in CCASH report, which was accepted by the Executive Council of the University and the same was not challenged and had attained finality.

4th Argument

25. He further submitted that the allegations made against the applicant under Section 504 IPC is not made out as to attract the provisions of Section 504 IPC. The relevant provision of Section 504 IPC is quoted herein for ready reference:

“504. 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.”

26. The necessary ingredients for invocation of Section 504 are-(a) intentional insult, (b) insult may be such as to give provocation to the person insulted, and (c) the accused must intend to 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 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.

27. He submitted that even if the entire facts unearthed by the Investigating Office during investigation is relied upon, only for the sake of argument, even then the ingredients with respect to offence under Section 504 IPC do not stand spelled out against the applicant as the applicant did not in any manner intentionally insult the complainant/O.P. no.2 to provoke her or knowing that such provocation would cause her to commit breach of public peace or to commit any other offence. As such, the trial court has committed abuse of the process of Court by taking cognizance for an offence which was, prima facie, not made out against the applicant.

28. To buttress this argument, he has placed reliance on paragraphs 12 and 13 of the judgment passed by Hon'ble the Supreme Court in the matter of **Fiona Shrikhande vs. State of Maharashtra and another**², which read as under :-

“12. Having noticed the scope of Section 202 Code of Criminal Procedure., let us examine whether the ingredients of Section 504 Indian Penal Code have been made out for the Magistrate to initiate proceedings. Section 504 is extracted for easy reference:

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.

13. Section 504 comprises of the following ingredients, viz., (a) intentional insult, (b) insult may be such as to give provocation to the person insulted, and (c) the accused must intend to know that such provocation would cause another to break the public peace or to

2 AIR 2014 SC 957

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 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.”

5th Argument

29. Learned counsel for the applicant further submitted that applicant had been charged for the offence under Section 506 IPC, but the same is not attracted in the present case. Section 506 IPC is quoted hereunder for ready reference:

“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 1[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.”

30. He further submitted that there are three ingredients to attract Section 506 IPC. Firstly, there must be an act of threatening another person. Secondly, of causing injury to the person’s reputation; or property of the persons threatened or to the person in whom the “threatened person is interested and Thirdly, the threat must be with the intent to cause alarm to the persons threatened or it must be to do any act, which is not legally bound to do or omit to do an act, which he is legally entitled to do.

31. He further contended that the facts and circumstances of the case and evidence available on record do not attract the provisions of Section 506 IPC as against the applicant, inasmuch as, it has nowhere been alleged by the complainant in her statement before the Magistrate that she was threatened by the applicant or that the complainant was threatened with any injury to be cause to any persons or the reputation of any person in whom she was interested with intention to cause alarm to O.P. no.2 or to cause O.P. no.2 to do any act which O.P. no.2 was entitled to do and in absence of there being evidence to this effect, the offence of criminal intimidation as defined under Section 503 IPC would not be substantiated against the applicant and consequently, the applicant could not be made to face prosecution under Section 506 IPC.

32. To buttress this argument, he has placed reliance on a judgment passed by the Hon'ble Supreme Court in the matter of **Vikram Johar vs. State of U.P. and others**³, which reads as under :

“25. In the above case, allegation was that Appellant had abused the complainant. The Court held that the mere fact that the allegation that Accused had abused the complainant does not satisfy the ingredients of Section 506.”

33. He has further placed reliance on a judgment passed by the Hon'ble Supreme Court in **Tilak Raj vs. State of Himachal Pradesh**⁴, which is quoted below:

“23. From the aforesaid, it is clear that the evidence of the prosecution is neither believable nor reliable to bring home the charges levelled against the Appellant. We are of the view that the impugned judgment and order passed by the High Court is not based on a careful re-appraisal of the evidence on record by the High Court and there is no material evidence on record to show that the Appellant is guilty of the charged offences, i.e., offence of cheating punishable Under Section

3 AIR 2019 SC 2109

4 AIR 2016 SC 406

417 of Indian Penal Code and offence of criminal intimidation punishable Under Section 506 Part I of Indian Penal Code.”

6th Argument

34. He further submitted that in the present case it is crystal clear on the total evaluation of the entire evidence collected by the I.O. including the statement of the informant under Section 164 Cr.P.C. that no offence against the applicant was spelled out under Sections 354C, 504, 506 IPC and since the said three offences were not found to be committed and ingredients in respect thereof are not fulfilled, the question of the commission of offence under Section 3(2)(va) of the S.C./S.T. Act does not arise.

35. Learned counsel for the applicant submitted that the provisions of Section 3(2)(va) of the S.C./S.T. Act would be attracted only when the offence for which the applicant is being sought to be prosecuted under the Indian Penal Code falls in the Schedule of the S.C./S.T. Act. Section 354C and 506 IPC comes in the schedule of the S.C./S.T. Act, as a result of which the applicant cannot sought to be prosecuted under the provisions of Section 3(2) (va) of the S.C./S.T. Act, if offence under Section 354C and 506 IPC are not made out.

36. He further submitted that the alleged incident dated 04.08.2016 was not in public view, there was nothing in the statement of O.P. no.2 under Section 161 Cr.P.C. to indicate that the alleged incident was committed with her in public view and only because of the fact that she belongs to Scheduled Caste Community and in absence of there being evidence to this effect, the criminal prosecution of the applicant under Section 3(2)(va) of the S.C./S.T. Act would be absolutely uncalled for.

37. He further argued that the Investigating Officer in the present case has submitted the charge-sheet against the applicant in an absolutely mechanical and blindfolded manner without appreciating the evidence on record as well

as the ingredients of the offences for which the applicant was being sought to be charge-sheeted.

38. He further submitted that the court below which has passed the cognizance order against the applicant has committed manifest error and illegality by taking cognizance against the applicant under those offences with respect to which there was absolutely no credible evidence on record, as such, the proceedings arising out of the charge sheet on account of the issuance of the order of cognizance are a gross abuse of the process of the court.

39. He further submitted that the applicant is aged about 70 years, he is a man having goodwill and reputation in the academics and society with absolutely clean and unblemished antecedents, as such, great travesty of justice would be caused, in case, the proceedings of the said case are allowed to continue and the applicant will be compelled to face criminal prosecution for those offences which are not even prima facie made out against him.

ARGUMENTS ON BEHALF OF OPPOSITE PARTY NO.2

40. Per contra, Sri Avaneesh Tripathi along with Sri A.P. Singh, learned counsel for O.P. no.2 submitted that the present FIR is placed on different set of facts and it should not be seen in the background of previous complaints. He further submitted that proceedings of criminal case are entirely different than the proceedings, which took place before the Committee and any finding returned by the Committee cannot be taken into account in respect of this FIR. He further submitted that the criminal proceeding is entirely different set of proceeding and has nothing to do with the earlier enquiry conducted by CCASH.

41. He further submitted that power dynamics was prevalent in the University as those Professors (including present applicant), against whom the complainant had filed complaint, were not simple Professors rather they

were the Heads of Department. He further submits that the findings returned by the CCASH was not independent or uninfluenced finding, as the members of the said Committee were the colleagues of the charged Professors. He further submitted that O.P. no.2 was not happy with the constitution of the Committee, so she had challenged the same. He also submitted that the Executive Council for some reason did not allow O.P. no.2 to get the Committee changed and proceeded with the said Committee.

42. Learned counsel for O.P. no.2 further submitted that the applicant had included O.P. no.2 in the Organizing Committee of an International Seminar. Thereafter, on various occasions he tried to allure her by extending undue favour and unwarranted gestures.

On being questioned, as to why O.P. no.2 did not refuse from becoming part of the International Seminal, learned counsel for O.P. no.2 replied that it would have amounted to insubordination and also that O.P. no.2 was not aware about the future intentions of the applicant.

43. He further submitted that Assistant Professor/Staff Members have supported her story but unfortunately, the incident happened in closed corners of the room, so they could not be the independent eye witnesses.

44. The counsel for O.P. no.2, very fairly stated that the only allegation against the applicant was that he had stated, "You hadn't been appointed, hadn't you been a scheduled caste".

45. Learned counsel for the O.P. no.2, very fairly agreed that the applicant has said nothing on the caste of O.P. no.2, which would attract the provisions of the S.C./S.T. Act. However, he added that the statement of O.P. no.2 recorded under Section 164 Cr.P.C. has to be looked into in its entirety. He further submitted that going through the statement of O.P. no.2 recorded under Section 164 Cr.P.C., the provisions of the S.C./S.T. Act would not be

attracted towards the applicant. However, in the statement of O.P. no.2 recorded under Section 161 Cr.P.C. when taken in its entirety, it does have bearing of the provisions of the S.C./S.T. Act. He fairly conceded that against the present applicant, no case under the provisions of S.C./S.T. Act is made out, however, offence in the Indian Penal Code is made out against the applicant.

46. He earnestly submitted that in respect of catena of judgments of Hon'ble Supreme Court it is a settled law that while determining the sections and liability in respect of a charged accused, the statements under Sections 161 and 164 Cr.P.C. as well as FIR has to be read in consonance and not in isolation.

CONCLUSION

47. Before advertng to the merits of the matter, this Court would like to see whether the allegations made in the FIR against the applicant and the statements given by the complainant when read together, discloses the commission of offence or whether prima facie no case is made out against the applicant.

48. In the charge-sheet the applicant was charged under Section 354C, 504, 506 IPC and under Section 3(2)(va) of the S.C./S.T. Act.

49. The allegation levelled against the present applicant in the FIR was as under:

“Professor Javed Akhtar along with Professor Man Mohan Krishna and Professor Prahlad Kumar had put pressure on her to withdraw the complaint as well as they used to send unsocial element to her and also used to harass her in various ways.”

50. In the statement under Section 161 Cr.P.C. against the applicant as well as others she has stated as follows:

“All three of them, stared her and kept her standing for an hour. They said that she belongs to Scheduled Caste and she can’t do anything. She could not sit with them and she would be beaten by chappal. She is not even worth talking to them. All the three of them told her, “I am your Head, I will not let you do the your service and you will not be able to stay here”. Prior to this, she had lodged an FIR in 2015, despite this, all the three of them have been harassing her and she is feeling insecure. They always use filthy words against her and say that she is elusive, lodges false FIRs and her character is not good.”

51. Further in her statement under Section 164 Cr.P.C. against the applicant she only stated as follows:

“Professor Prahlad said that she had forgotten her limits and she is very fond of going to Courts.”

52. From the bare perusal of the contents of the FIR, and the statements under Section 161 and 164 CrP.C., it is quite apparent that there is no such allegation against the applicant that calls for invoking of Section 354C of IPC against him. The ingredients of Section 354C of IPC of voyeurism is only applicable if an accused captures the image of a woman engaging in private act, in circumstances where she would usually have the expectations of not being observed either by the perpetrator or by any other person. In this case, the allegations levelled against the applicant does not fall within the category of the offence and hence, no offence is made out against him under Section 354C of IPC.

53. Further, the applicant had been charged under Section 504 of IPC. As per the ingredients of Section 504 of IPC, which are (a) intentional insult, (b) insult may be such as to give provocation to the person insulted, and (c) the accused must intend to know that such provocation would cause another to break the public peace or to commit any other offence, in this case, the offence under Section 504 IPC is not made out against the applicant.

54. The allegations levelled in this FIR supported by the statements of O.P. no.2 under Sections 161 and 164 Cr.P.C., the insult alleged is not of a degree that would provoke a person to break public peace or to commit any other offence, and hence, the ingredients of Section 504 of IPC are not satisfied and the same offence could not have been levelled against the applicant.

55. Further, the applicant had been charged under Section 506 IPC. As per the ingredients of section 506 IPC, which are firstly, there must be an act of threatening another person; secondly, of causing injury to the person's reputation; or property of the persons threatened or to the person in whom the "threatened person is interested; and thirdly, the threat must be with the intent to cause alarm to the persons threatened or it must be to do any act, which is not legally bound to do or omit to do an act, which he is legally entitled to do. In this case, the allegations levelled in the FIR and the statements of the complainant under Sections 161 and 164 Cr.P.C., prima facie does not fall in the ambit of criminal intimidation.

56. Similarly, the offence under Section 506 of IPC is not said to be made out as there is no criminal intimidation done by the applicant, even if the contents of the FIR and the statements of complainant/O.P. no.2 under Sections 161 and 164 Cr.P.C. are taken as a gospel truth, still, prima facie, no offence is made out against the applicant.

57. Even if the allegations made in the FIR are taken to be true and accepted in its entirety, they do not prima facie constitute any offence against the applicant. Further, a bare perusal of the allegations levelled against the applicant in the FIR as well as the statements under Sections 161 and 164 Cr.P.C. do not disclose commission of offence as suggested by the prosecution and no case is made out against the applicant. The entire criminal proceeding is manifestly attended with malafides and the same has been carried out just to wreak vengeance against the Head of Department, who had

asked her to carry out her duties diligently. The entire proceedings initiated by her was with an ulterior motive for wreaking vengeance with a view to spite the applicant for the personal grudge, which she had against him.

58. The Hon'ble Supreme Court in the matter of **State of Haryana and others vs. Ch. Bhajan Lal and others**⁵ has laid down the guidelines under which the High Court should exercise the inherent powers granted under Section 482 Cr.P.C. Paragraph 102 of the aforesaid judgment is quoted below:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

“(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order

5 1992 Suppl (1) SCC 335

of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides 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."

59. The instant case is squarely covered by Guidelines (1), (3) and (7) of **Bhajan Lal's case(supra)**. The complainant, whenever she had been admonished by her seniors, she would go and file complaints in all possible forum to wreak vengeance with ulterior motive. Further the plain reading of the FIR and the statements of the complainant under Sections 161 and 164 Cr.P.C. clearly shows that the allegations levelled against the applicant, does not comes under the ambit of Sections 354C, 504 and 506 IPC. Since, the offences does not fall within the ambit of these sections, in the result Section 3(2)(va) of the S.C./S.T. Act is also not attracted in the instant case as to attract Section 3(2)(va) of the S.C./S.T. Act, offences under Sections 354C and 506 IPC are to be made out.

60. Apparently, O.P. no.2 was in habit of making complaints to all possible authorities. It is hard to believe that all the three Professors, who took over as the Head of Department, had personal grudge against her and are harassing her. Which Head of Department in his senses would do that, specially when it is known to everyone that O.P. no.2 is in a habit of lodging complaints, and she will not even think twice before using the S.C./S.T. Act as a weapon to enmesh them in criminal cases. If such kind of activities are not nipped in the

bud, it will set a precedent where other members of the S.C. or the S.T. community will open start insubordination and the Head of Department will not be in a position to do anything, and when warned or admonished, cases under the S.C./S.T. will be foisted against them.

61. In view of aforesaid facts and circumstances, this is a fit case to exercise inherent powers under Section 482 Cr.P.C. and quash the criminal proceedings initiated by the complainant/O.P. no.2 against the present applicant.

62. The S.C./S.T. Act has been enacted with the objective that the underprivileged need to be protected against any atrocities to give effect to the constitutional ideals. At the same time, the said Act cannot be converted into a charter for exploitation or oppression by any unscrupulous person or by police for extraneous reasons against other citizens as has been found on several occasions. Any harassment of an innocent citizen, irrespective of caste or religion, is against the guarantee of the Constitution. This Court must enforce such a guarantee. Law should not result in caste hatred. The Preamble to the Constitution, which is the guiding star for interpretation, incorporates the values of liberty, equality and fraternity. This Court is not expected to adopt a passive or negative role and remain bystander or a spectator if violation of rights is observed. It is necessary to fashion new tools and strategies so as to check injustice and violation of fundamental rights. No procedural technicality can stand in the way of enforcement of fundamental right.

63. The instant case is a classic case where a subordinate Professor, whenever had been asked to teach properly and to go well prepared in the classes, she would go and file complaint against the Head of Department. The entire complaint filed by her is nothing but a pure abuse of process of law and misuse of the provisions of the S.C./S.T. Act.

64. The menace of filing false and frivolous cases under the S.C./S.T. Act is writ large. Various High Courts and the Hon'ble Supreme Court has taken very strict view of the same. This menace has been well considered by various High Courts and the Hon'ble Supreme Court.

65. Madras High Court in the matter of **Jones vs. State**⁶ has observed as follows:

“This Court recently has brought to light the misuse of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against people of other community. This is another example of misuse of the Act. The purpose of bringing SC & ST Act is to put down the atrocities committed on the members of the scheduled castes and scheduled tribes. The law enforcing authorities must bear in mind that it cannot be misused to settle other disputes between the parties, which is alien to the provisions contemplated under the Act. An Act enacted for laudable purpose can also become unreasonable, when it is exercised overzealously by the enforcing authorities for extraneous reasons. It is for the authorities to guard against such misuse of power conferred on them.”

66. Gujarat High Court in **Dr. N.T. Desai vs. State of Gujarat**⁷ has held as follows :

“..... Bearing in mind this most embarrassing and excruciating situation created by the complainant when, this Court as a Constitutional functionary is duty bound to zealously protect the liberty of citizen, should it be helplessly watching and passively surrendering itself to sometimes prima facie ex-facie malicious complaint.....”

67. Dealing with the same issue, the Gujarat High Court in **Dhiren Prafulbhai Shah versus State of Gujarat**⁸ has observed as under:

“The matter in hand is one another example of misuse of the Act. As observed by me earlier, the purpose of bringing SC and ST Act is to put-down the atrocities committed on the members of the Scheduled Castes and Scheduled Tribes. The law enforcing authorities must bear

6 2004 Cri LJ 2755

7 (1997) 2 Guj LR 942

8 2016 SCC OnLine Guj 2076; 2016 Cri LJ 2217

in mind that it cannot be misused to settle other disputes between the parties like the case one in hand, which is alien to the provisions contemplated under the laudable Act. An Act enacted for laudable purpose can also become unreasonable, when it is exercised over-zealously by the enforcing authorities for extraneous reasons. It is for the authorities to guard against such misuse of power conferred on them.

*49. Passing mechanically orders by the Court of Magistrates in complaint and/or registration of the F.I.R. at the Police Station, which do not have any criminal element, causes great hardships, humiliation, inconvenience and harassment to the citizens. For no reasons the reputation of the citizen is put to stake as immediately after the said orders are passed, innocent citizens are turned as accused.
.....”*

68. Bombay High Court in **Sharad versus State of Maharashtra**⁹ has observed as under :

“12. We hasten to add that such type of complaints for rampant misuse of the provisions of Section 3(1)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, are largely being filed particularly against Public Servants/quasi judicial/judicial officers with oblique motive for satisfaction of vested interests.....”

69. The Hon’ble Supreme Court in the matter of **Subhash Kashinath Mahajan v. State of Maharashtra**¹⁰ has held as under :

“72.The underprivileged need to be protected against any atrocities to give effect to the constitutional ideals. The Atrocities Act has been enacted with this objective. At the same time, the said Act cannot be converted into a charter for exploitation or oppression by any scrupulous person or by police for extraneous reasons against other citizens as has been found on several occasions in decisions referred to above. Any harassment of an innocent, irrespective of case or religion, is against the guarantee of the Constitution. This Court must enforce such a guarantee . Law should not result in caste hatred.....”

9 (2015) 4 Bom CR (Cri) 545

10 (2018) 6 SCC 454

70. The Hon'ble Supreme Court and various High Courts had time and again dealt with problems where the litigant/complainant having filed false, frivolous and vexatious litigation to wreak vengeance and those have come out heavily to curb the serious problem.

71. The Hon'ble Supreme Court in the matter of **Dr. BuddhiKota Subbarao vs. K. Parasarn**¹¹ has criticized the practice of frivolous petitions. The Supreme Court observed as under:

“No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived frivolous petition.”

72. There are other instances where the Supreme Court had passed order of exemplary costs. For reference :**Sivamoorthy vs. University of Madras**¹² and **State of Punjab v. Bhajan Singh**¹³.

73. This is a case where there is pure abuse of process of law where the complainant, just to wreak the personal vengeance against the Head of Department, had tried to implicate him and his colleagues by filing false and frivolous cases. Whenever the Seniors/Head of Department/Professors asked her to teach properly and to take classes regularly, she would file a complaint against them. This is not one of the first case which happened. The complainant, who is a well educated lady, knows the provisions of law very well and she had been abusing the provisions of law for personal gain. The complaint filed by the complainant was nothing but a pure abuse of process of law.

74. Because of the filing of frivolous cases, the reputation and public image of the applicant and his colleagues, who are Professors and people with high morals and reputation, had been tarnished. They had to run from pillar to post,

11 AIR 1996 SC 2687

12 (2001) 10 SCC 483

13 (2001) 3 SCC 565.

from Police Station to Court to save themselves. Evidently, this was false and frivolous case filed against the applicant only to wreak personal vengeance. Such kind of vexatious proceedings should not be allowed to continue and if anybody engages in doing so, such activities have to be curbed down. This is a perfect case where exemplary cost should be imposed on the complainant/O.P. no.2. The loss of reputation, public image and the financial loss caused to the applicant are far much more, but as a token a cost of Rs.5 lacs is imposed on O.P. no.2 for abusing the process of law by filing frivolous cases only for personal vengeance and personal gains. This amount should be given to the applicant forthwith after making deduction from the salary of O.P. no.2 as well as other benefits given by her employer.

75. Prima facie, on bare perusal of the FIR, the statements of O.P. no.2 under Sections 161 and 164 Cr.P.C., no offence for which the applicant has been charged, is made out.

76. This is a case where the Court if does not interfere and exercises the inherent powers under Section 482 Cr.P.C., it will fail in its duty. In exercise of inherent powers under Section 482 Cr.P.C., the instant application is allowed and charge sheet dated 08.10.2016 and the entire criminal proceedings of Case Crime No.701 of 2016, Police Station-Colonelganj, District-Allahabad pending in the Court of Special Judge, S.C./S.T. Act, so far it relates to the present applicant, are hereby quashed.

77. With the aforesaid observations, the instant application stands **allowed**.

Order date : 23.02.2024
Manish Himwan