

(2024) 04 BOM CK 0015
In the Bombay High Court
Case No : Criminal Application No.651 Of 2021

Amol Bhaskar Sulakhe

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 01-04-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Indian Penal Code, 1860 — Section 34, 441, 447, 448, 504, 506, 509

Citation : (2024) 04 BOM CK 0015

Hon'ble Judges : A. S. Chandurkar, J; Jitendra Jain, J

Bench : Division Bench

Advocate : Aditya Ajgaonkar, Rupal Srimal, H. M. Inamdar, K. V. Saste, Sagar Kursija

Final Decision : Partly Allowed

Judgement

Jitendra Jain, J

1. Admit. This application is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") for quashing of FIR No.291 of 2021 of the Indian Penal Code, 1860 (for short "I.P.C.") lodged by Respondent No.3-Complainant.

Brief facts are as under:-

2. The Applicant and Respondent No.3-Complainant belongs to same family. In the year 1952, a partnership firm by the name of M/s. D. B. Sulake & Sons was established by the grandfather of the Applicant and Respondent No.3-Complainant for carrying out business at Barshi, District Solapur, Maharashtra. After the demise of the grandfather, the business of the firm was conducted by the respective fathers of the Applicant, Respondent No.3 and their nephew. As the time passed by the reins were handed over to the third generation i.e. the Applicant and Respondent No.3-Complainant. Difference of opinion arose between the third generation children which resulted into disputes between the

family members.

3. On 5th April 2021, the Applicant along with others lodged a civil suit at Barshi against Respondent No.3-Complainant seeking injunction from disturbing his peaceful possession of certain premises referred to in the said suit. We are informed that there are no orders passed in the said civil suit.

4. On 24th June 2021, the Applicant made a complaint against Respondent No.3 with the Police Station and an FIR came to be lodged on the said date at 21:33 hours for the offences under Sections 504, 506 and 509 read with Section 34 of the IPC against Respondent No.3. We are informed that the said FIR has not been challenged by Respondent No.3-Complainant.

5. On the very same day i.e. 24th June 2021, the Respondent No.3-Complainant made a complaint with the Police Station against the Applicant and an FIR came to be lodged for offences under Sections 441, 447, 448, 504 and 506 of the IPC against the Applicant. The said FIR was lodged at 23:01 hours i.e. after around 1½ hours of the Applicant having made complaint against Respondent No.3 and same is the subject matter of the present proceedings.

6. It is also important to note that from 24th March 2021 to 1st April 2021, the Applicant had made various complaints in writing against Respondent No.3 with Barshi Police Station narrating the disturbance created by Respondent No.3 informant and seeking security against the same.

7. Pursuant to the FIR lodged by Respondent No.3-Complainant against the Applicant, Respondent No.2 also recorded statements of various people and charge-sheet came to be lodged on 18th November 2021 against the Applicant for the offences under Sections 441, 447, 448, 504, 506 of the IPC. It is on this backdrop that the Applicant is before us today seeking quashing of the FIR dated 24th June 2021.

8. The Applicant submits that on a bare perusal of the FIR, it is cleared that none of the ingredients required to be satisfied for the aforesaid offences can be said to have been fulfilled and, therefore, relegating the Applicant for trial would be abuse of process of law. The Applicant further submitted that the disputes between Respondent No.3-Complainant and the Applicant are in the nature of civil disputes and, therefore, same cannot be coloured as criminal by taking recourse to the provisions of the IPC and Cr.P.C. The Applicant further submitted that there is a delay in lodging the FIR which has not been explained and, therefore, even on this count, the FIR is required to be quashed. The Applicant has relied upon various decisions of the Supreme Court and this Court in support of his submissions.

9. Per contra, Respondent No.3 submits that on a bare perusal of the FIR and the charge-sheet, an offence is made out under the aforesaid Sections and, therefore, the Applicant should be directed to face the trial. The Respondent further submitted that there are no averments made by the Applicant as to in

what capacity, he is in possession of the premises which are referred to in the charge-sheet. The Respondent No.3, therefore, submitted that this is not a case where this Court should exercise its jurisdiction to quash the FIR. The Respondent No.1-State has adopted and supported the submissions made by Respondent No.3.

10. We have heard learned counsel for the Applicant and the Respondents and with their assistance have perused the documents annexed to the petition and tendered during the course of the hearing.

11. To adjudicate the present proceedings, it is necessary to narrate what has been stated in the FIR dated 24th June 2021 lodged at 23:01 hours against the Applicant on a complaint made by Respondent No.3.

12. In the impugned FIR, the complainant has given a brief history about the formation of partnership by his grandfather and subsequently by his father and uncles. Thereafter the demise of various members of the family is described. It is stated that since the Applicant did not agree to enter the complainant's name in the firm by succession, the relations between them spoiled from April 2020. The complainant further has stated that the Applicant has forcibly encroached upon the two rooms above the shop owned by complainant and has stored material of the shop. It is further stated in the FIR that inspite of his request not to enter the said rooms, he repeatedly encroached upon the same and stored the material without the complainant's permission and now he has locked the said rooms. It is stated that the Applicant has also stored the material in front of the residential house of the complainant's cousin and inspite of the request made same has not been removed. Therefore, the Respondent and his cousin have approached the Police Station to lodge complaint against the Applicant. It is further stated that from 15th April 2021, till date of lodging the present complaint, the Applicant has unauthorizedly and forcibly entered and encroached upon two rooms belonging to the complainant and his cousin without their permission and stored material and has locked the said rooms which are owned by the complainant and his cousin. The complainant has further stated in the FIR that the Applicant is threatening and abusing and, therefore, a complaint is made against the Applicant.

13. It is on the basis of above FIR, we are called upon to adjudicate the present proceedings for quashing the same. Before we proceed to ascertain whether the ingredients of the Sections which are invoked in the FIR are satisfied or not, it is necessary for us to first decide whether this Court in exercise its jurisdiction under Section 482 of the Cr.P.C. can entertain the present application. In this connection, the guidelines laid down by the Supreme Court from time to time for exercise of the jurisdiction under Section 482 of the Cr.P.C. are as under :-

“(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the

accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

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

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

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

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

The above guidelines have been culled out from various decisions, to mention a few, *State of Haryana vs. Bhajan Lal* 1992 Supp (1) SCC 335 and *Rupan Deol Bajaj vs. Kanwar Pal Singh Gill* (1995) 6 SCC 194.

14. We now propose to apply the aforesaid guidelines to the facts of the present proceedings and the Sections invoked in the FIR.

15. The first set of Sections which have been invoked in the FIR which we now propose to deal with is Sections 504 and 506 of IPC which reads thus:-

"504. Intentional insult with intent to provoke breach of the peace. —Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with

both.

506. Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

16. Section 504 provides a remedy against a person using abusive and insult language. The Section requires intentional insult / language used which may lead to breach of public peace. Such insults may be by words or conduct. The words must be more than mere vulgar abuse. Mere breach of good manners does not constitute offence under this Section. If the insult is of such a nature, it may give such provocation which may rouse a man to act either to break the public peace, or to commit any other offence, then the offence under this Section is said to have been committed. Therefore, it is necessary to examine the FIR as to whether the ingredients of abusive language or intentional insult is appearing so as to invoke Section 504 of IPC. In the FIR, it is a sine-quo-non that the words / insult has to be expressly specified and if the same is absent on a reading of the FIR then no offence can be said to have been made under Section 504.

17. In our view and on a reading of the FIR, same does not provide for any abusive language or insulting words used for the Respondent No.3 to invoke Section 504 of the IPC. Even in the statements recorded of various persons at the site of the shop of the Applicant / Respondent No.3, same does not bring out as to what was the language used or insult inflicted on Respondent No.3 which would result into disturbing the public peace. The statements recorded are general in nature and only described the allegations about the premises being occupied by the Applicant which according to Respondent No.3 is illegal. We could not find any words used or utterances specified in the FIR or in the statement recorded which are abusive in nature or would result into insult to break the public peace. Therefore, in our view, the ingredients of Section 504 cannot be said to have been satisfied in the present case and consequently the punishment under Section 506 also cannot be invoked.

18. It is also important to note that the Applicant has lodged various written complaints against the Respondent No.3 in the month of March / April 2021. On 24th June 2021, the Applicant has also lodged FIR against Respondent No.3 for offence under Sections 504, 506, 509 and Section 34 of IPC. The FIR impugned in the present proceedings appears to be a counter blast by the Respondent No.3 to the FIR lodged on a complaint made by the Applicant. There appears to be dispute between the family members. Therefore, in such situation, certainly the provision of Sections 504 and 506 cannot be made applicable merely when the ingredient of these Sections are not to be found in the FIR.

19. This Court in the case of Madhavrao Gajanan Deshpande vs. State of Maharashtra 2003 (4) Mh.L.J. 101 had an occasion to consider Section 504 and we felt it necessary to reproduce paragraph 4, which reads thus :-

"4. The provisions of section 504 indicate that the offender should intentionally

insult the complainant and thereby should give provocation to any person, intending or knowing it to be likely that such provocation should cause him to break the public peace, or to commit any other offence. For the purpose of coming to a prima facie conclusion, whether offence has been made out or not, the abuses uttered or alleged to have been uttered should have been mentioned in the complaint or in the chargesheet. When those abuses are mentioned, it would give an idea to the Court whether by said abuses, the person to whom the abuses have been addressed would get provoked and to such an extent that thereby he would commit breach of peace, or commit any other offence. It is a matter of common experience that in the society some abuses are being uttered without meaning anything thereby. What section 504 requires is that there has to be an intention to insult a person by uttering said abuses or bad words. Therefore, failure in quoting those abuses would lead to the conclusion that no offence has been prima facie made out."

20. Similarly, the Supreme Court in the case of *Fiona Shrikhande vs. State of Maharashtra* (2013) 14 SCC 44 while interpreting Section 504 observed as under :-

"13. Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC."

21. Based on the facts before us and by applying the decision referred to hereinabove, we have no hesitation in holding that the ingredients of Section 504 of IPC are not even prima-facie be said to have been attracted and, therefore, to the said extent, the proceedings against the Applicant under Sections 504 and 506 of the IPC are required to be set aside.

22. Coming to the allegations under Sections 441, 447 and 448 of the IPC, it is the case of Respondent No.3 that the Applicant has wrongly occupied his premises without he having any right, title or interest in the said premises. The Respondent No.3 has further submitted that the properties described in the civil suit for injunction are not the properties for which the complaint is made. The Respondent No.3 has further submitted that the Applicant has not stated or made any averment as to in what capacity he is in possession of the premises for which the complaint is made. In our view, there is no clarity on the identification

of the property for which the suit is lodged vis-a-vis the statements recorded and reproduced in the FIR. This in our view, would require adjudication by leading evidence and, therefore, insofar as the provision of Sections 441, 447 and 448 are concerned, it cannot be said prima-facie that the ingredients are not satisfied. We are, therefore, inclined to permit the Applicant to approach the trial Court for seeking discharge.

23. We, therefore, pass the following order:-

ORDER

(i) The Criminal Application is partly allowed.

(ii) The offence registered vide FIR No.291 of 2021 dated 24th June 2021 at Barshi City Police Station under Sections 504 and 506 of the Indian Penal Code stands quashed.

(iii) Insofar as other offences are concerned, the Applicant is at liberty to move the trial court seeking discharge.

(iv) All grounds in that regard are kept open.