
(1981) 04 SHI CK 0004
In the High Court Of Himachal Pradesh

Prem Pal Singh and Others	Vs	APPELLANT
Mohan Lal		RESPONDENT

Date of Decision : 28-04-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 448, 500, 504

Citation : (1981) CriLJ 1208 : (1981) ShimLC 417

Hon'ble Judges : T.R. Handa, J

Bench : Single Bench

Judgement

T.R. Handa, J.—By this petition moved u/s 482 of the Code of Criminal Procedure, the petitioners seek the quashing of the criminal proceedings now pending against them in the court of the Chief Judicial Magistrate, Kulu under Sections 448, 500 and 504 of the Indian Penal Code, petitioner No. 1 is the Secretary of the Marketing Committee, Kulu, petitioner No. 2 is the Fee Collector, Marketing Committee, Kulu and petitioner No. 3 is a daily paid employee in the same Market Committee.

2. The facts giving rise to this petition are short and simple. On 24-7-1979 a petition of complaint was filed by Shri Mohan Lai respondent against the present petitioners under Sections 448, 500, 501 and 504, I.P.C. in the Court of the Chief Judicial Magistrate, Kulu. The allegations in the complaint were that on 21-7-1979 at about 6 P. M. the petitioners entered the shop of the respondent-complainant without his permission and on so entering they forcibly took into possession certain books of account concerning the shop of the respondent-complainant. When asked to disclose their identity, the petitioners abused the respondent and further threatened him that they would call the S. H. O. Kulu and get him arrested. Some other persons of the locality gathered at the shop of the respondent and in their presence also the petitioners abused him and threatened to get him arrested by the police.

3. After recording the preliminary evidence of the respondent-complainant the

learned Chief Judicial Magistrate vide his order dated 7-8-1979 summoned all the three petitioners under Sees. 448, 504 and 500, I.P.C. The petitioners entered appearance in response to the summons issued against them and moved an application before the learned Chief Judicial Magistrate u/s 197 of the Code of Criminal Procedure on 30-4-1980 praying that the provisions of Section 197, Cr.P.C. were attracted in their case and since no sanction of the State Government had been obtained, the proceedings taken against them deserved to be quashed. The learned Chief Judicial Magistrate, however, without recording any order on that application proceeded to frame charges against the petitioners under Sections 448, 500 and 504, I.P.C. The charges as framed may be reproduced:

Firstly that you on or about 21-7-1979 at about 6 P.M. at Akhara Bazar Kulu. committed house trespass by entering into the shop of Shri Mohilh Lai used for the custody of property with intent to abuse and defame him and that you thereby committed an offence punishable u/s 448, I.P.C. and within the cognizance of this Court;

Secondly that on the aforesaid day, time and place you defamed Mohan Lai by abusing and threatening him that you will get him arrested by the police by calling the S. H. O. intending thereby to harm the reputation of said Mohan Lai and thereby committed an offence punishable u/s 500 I.P.C. and within the cognizance of this Court;

Thirdly, that you on or about the same day, time and place intentionally insulted and thereby gave provocation to said Mohan Lai intending that such provocation would cause the said Mohan Lai to break the public peace and thereby committed an offence punishable u/s 504 I.P.C. and within the cognizance of this Court.

4. The petitioners contended that they had gone to inspect the shop of the respondent in the discharge of their official duties and they were authorised under the provisions of the Himachal Pradesh Marketing Act to check and search the premises of the respondent. As a result of such inspection they actually filed a challan against the respondent u/s 32(1) of the Himachal Pradesh Agricultural Produce Markets Act, 1969 (9 of 1970). The complaint filed by the respondent, was a counterblast to such challan filed against him at the instance of the petitioners, Even otherwise the allegations in the complaint disclose no offence for which the learned Chief Judicial Magistrate could take cognizance. The initiation of the proceedings against the petitioner is thus only an abuse of the process of the Court.

5. After going through the record of the case and hearing the learned Counsel for the parties, I find that there is a good deal of substance in the submissions made on behalf of the petitioners. The simple allegations as set out in the complaint and as referred to earlier would not, even if taken at their face value, constitute any of the three offences for which the petitioners were summoned and stand charged. The preliminary evidence recorded in support of the complaint petition

would not improve the case against the petitioners any further.

6. The first head of the charge framed against the petitioners is u/s 448 I.P.C, which provides for punishment for house trespass, as defined in Section 442 I.P.C. House trespass is only an aggravated form of criminal trespass which has been defined in Section 441 I.P.C. in the following terms :?

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass.

When Section 441 I.P.C. speaks of entering on property with intent to commit an offence or to intimidate, insult or annoy any person in possession of the property, it speaks of the main intention in the action on the part of the alleged trespasser and not of any subsidiary intention that may also be present in addition to the main intention. In other words the main aim or object of entry on the property of the other by the person accused of an offence of criminal trespass should be to commit an offence or to annoy, intimidate or insult a person in possession of that property. It is not sufficient for this purpose to show merely that the likely or natural consequence of such an entry could be annoyance, intimidation or insult and that such likely consequence was known to the person entering. Such intention, aim or object of the person entering is to be gathered from the particular facts and circumstances of each case. The facts of this case show that on entering the shop of Shri Mohan Lai complainant the petitioners had declared that they wanted to check his books of account (as per statement of Shri Daryodhan Lai P.W. 3). Shri Kishan Chand P.W. 4 had next stated that the identity of the petitioners had become known when they threatened to get Shri Mohan Lai complainant arrested through the police. In these circumstances the main and the avowed object/intention of the petitioners in entering the shop of Shri Mohan Lai complainant was to check/ inspect his account books. They had of course the power to do so under the law (see Section 42 of the Himachal Pradesh Agricultural Produce Markets Act 1970 and Rule 62 of the Rules framed thereunder). There is no material on the record to suggest any other intention on the part of the petitioners in entering the shop of Shri Mohan Lai complainant and in case during the course of their stay in the shop of the complainant for checking his account books, the petitioners actually used some abusive language, this would not by itself suggest that their main intention in entering the shop was to abuse or defame the respondent as mentioned in the charge and not to check/inspect the account books of the complainant. The charge u/s 448 I.P.C. as framed against the petitioners is thus groundless.

7. Coming next to the charge u/s 500 I.P.C. the necessary ingredients required to constitute this offence appear to be lacking both in the allegations set out in the complaint petition as also in the language in which the charge has been framed. The essential ingredients for an offence falling u/s 500 I.P.C. are (i) the

making or publishing of an imputation concerning any person; (ii) such imputation must have been made (a) by words either spoken or intended to be read; or (b) by signs; (c) or by visible representations and (iii) such imputations must have been made with the intention of harming or knowing or having reason to believe that it will harm the reputation of the person concerning whom it is made, Imputation means accusation against a person and it implies an allegation of fact and not merely a term of abuse. In the instant case there is no allegation whatever of any imputation had been made by the petitioners or any of them concerning Shri Mohan Lai complainant. It was perhaps on account of this reason that no such imputation finds mention in the language of the charge as framed by the learned Chief Judicial Magistrate against the petitioners. The second charge u/s 500 I.P.C. is thus vitiated in law and cannot be sustained.

8. The third charge is u/s 504 I.P.C. which reads:

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.

The first essential element constituting the offence falling u/s 504 I.P.C. is that there should have been an act or conduct on the part of the accused which would amount to an intentional insult. The second ingredient of this offence is that the intentional insult so caused should be such as to give provocation to the person insulted and the provocation given should be of the nature as would cause the person given the provocation to break the public peace or to commit any other offence. The third ingredient of this offence is that the person giving the insult must intend or know that his act would cause a provocation of the nature mentioned above. In the instant case though the language of the charge is silent with regard to the act of intentional insult alleged to have been committed by the petitioners, the allegations in the complaint suggest that such act was the use of abusive language by the petitioners. In order to appreciate whether the language used by the petitioners could amount to an insult of the type as could invoke provocation of the nature mentioned above, it was necessary to know what were the abusive words alleged to have been used by the petitioners. In the absence of the actual words alleged to have been used, it is not possible to conclude if those words at all amounted to insult or indicated such intention or knowledge on the part of the petitioners as is contemplated by the language of Section 504 I.P.C. If for some reason it was not possible to reproduce the exact words used constituting the insult, the gist or purport thereof must have been stated. It may be remarked that the term "abusive language" is very elastic and of wide amplitude and the words falling within the ambit of this term may not always amount to insult. On the basis of the mere allegation that the petitioners used abusive language, no charge u/s 504 I.P.C. could be framed against the petitioners. This charge thus also cannot be sustained.

9. This is thus clearly a case where the allegations contained in the complaint do not constitute any offence and the learned Chief Judicial Magistrate was certainly in error in taking cognizance of a complaint of this type and in framing charges against the petitioners in the manner he has done. I would accordingly accept this petition and quash the charges framed against the petitioners as also the criminal proceedings pending against them in the Court of the Chief Judicial Magistrate, Kulu.