

(2025) 08 AHC CK 0651
In the Allahabad High Court, Lucknow Bench
Case No : Application U/S 482 No 5581 Of 2022

Sarfaraj And Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 19-08-2025

Acts Referred:

Code of Criminal Procedure Act, 1973 — Section 319, 374(2)
Indian Penal Code, 1860 — Section 34, 307, 324
Probation of Offenders Act, 1958 — Section 3, 4, 360

Citation : (2025) 08 AHC CK 0651

Hon'ble Judges : Rajnish Kumar, J

Bench : Single Bench

Advocate : Pradeep Kumar Tripathi, Arun Saxena

Final Decision : Allowed

Judgement

Rajnish Kumar, J

1. Heard Sri Mohammad Ahmad, learned counsel for the applicants, learned A.G.A. for the State and Sri Rakesh Kumar Maurya, learned counsel for the respondent No.2.

2. The instant application under Section 482 of Code of Criminal Procedure, 1973 (here-in-after referred as CrPC) has been filed for setting aside the summoning order dated 13.04.2021 passed by learned Additional Civil Judge (Junior Division) / Judicial Magistrate, Raibareilly in Complaint Case No.9/2019 (new Case No.22/2019); Mohd. Ismayl Khan Vs. Sarfaraj and Others, under Sections 147, 427, 504, 506 I.P.C., Police Station Jayas, District Amethi pending in the court of learned Fast Track Court / S.D., Raibareilly and the order dated 18.04.2022 passed by learned Fifth Additional District and Sessions Judge, Raibareilly in Criminal Revision No.12/2022; Mohd. Jaleel Vs. Mohd. Ismayl Khan and Others and the order dated 30.07.2022 passed by learned Second Additional Sessions Judge, Raibareilly in Criminal Revision No.139/2022; Sarfaraj and Others Vs. State of U.P. and another alongwith the entire criminal proceedings of

Complaint Case No.9/2019 (new Case No.22/2019); Mohd. Ismayl Khan Vs. Sarfaraj and Others, pending in the court of learned Fast Track Court / S.D., Raibareilly.

3. Learned counsel for the applicants submitted that the complaint has been filed only in a counter blast to F.I.R. lodged by the applicants bearing F.I.R. No.0057 of 2018, under Sections 504, 506 I.P.C. at Police Station Jayas, District Amethi in regard to the incident dated 10.04.2018 by the applicant No.1 against the respondent No.2 and three other persons and to give colour of criminal to a civil dispute between the parties. He further submitted that the applicant No.1 is aged about 101 years of age and at the time of alleged incident in 2018, he was about 96 years of age, therefore, the question of incident as alleged by the respondent No.2 itself is misconceived and not tenable.

4. He further submitted that the impugned orders have been passed without considering the contradictions in the statements of the complainant and the witnesses, in which one of the witness is an accused in the aforesaid F.I.R. lodged by the applicant No.1. He further submitted that the complaint has been filed after about 8 months of the incident after coming to know about the filing of charge sheet against the respondent No.2 and others. He further submitted that the learned revisional court also failed to consider the grounds raised by the applicants and dismissed the revisions, therefore, the applicants are constraint to approach this Court by means of present application under Section 482 CrPC.

5. On the basis of above, learned counsel for the applicants submitted that the instant application under Section 482 CrPC is liable to be allowed and the impugned orders are liable to be set aside alongwith the entire proceedings of the aforesaid criminal case.

6. Per contra learned counsel for the respondent No.2 vehemently opposed the submissions of learned counsel for the applicants and submitted that the impugned orders have been passed after considering the evidence and material on record. He further submitted that the applicant No.1 got his name recorded fraudulently on the land of respondent No.2, in regard to which the civil proceedings are pending and an interim order has been granted by this Court, even then the applicants tried to plough the field of the respondent No.2 and on being confronted, they had committed the crime, for which, the complaint has been filed, in which the applicants have rightly and in accordance with law been summoned. Thus, the submission of learned counsel for the respondent No.2 is that the instant application under Section

482 CrPC has been filed on misconceived and baseless grounds, which is liable to be dismissed.

7. I have considered the submissions of learned counsel for the parties and perused the records.

8. There is no dispute among the learned counsel for the parties that there is an

old enmity between the parties on account of claim of a land bearing Khata No.4999, in regard to which, civil proceedings are going on between the parties. It is also not in dispute that the aforesaid F.I.R. No.0057 of 2018, under Sections 504, 506 I.P.C. at Police Station Jayas, District Amethi was lodged on 11.04.2018 with regard to the incident of 10.04.2018 at about 06:00 in the evening by the applicant No.1; Sarfaraz. It has been alleged in the F.I.R. that the applicant is aged about 88 years and there is a deadly enmity with the accused therein for the last about 35-40 years in regard to land bearing Khata No.4999. The accused named therein came together on 10.04.2018 at about 06:00 in the evening with lathi, danda and gun and started ploughing the land of the complainant. The complainant dialed on No.100, on which the police came on the spot and when the police came, the accused persons ran away. Thereafter, when the police went back, the accused persons came at the door of the applicants, abused them and threatened to kill and thereafter again started ploughing. In the said case, charge sheet was forwarded on 14.04.2018 against the respondent No.2; Mohd. Ismayl, Maksood Alam, Mohd. Ammen and Ashraf.

9. The respondent No.2 after about 9 months filed complaint case No.9/2019 on 04.01.2019 against the applicants under Sections 504, 506, 427 and 147 I.P.C. with regard to the same incident of 10.04.2018 at about 06:00 in the evening alleging therein that there is a dispute between the complainant and the accused with regard to a land and the respondent No.2 is in possession of the land in dispute since 1983 but the applicants have got their names mutated fraudulently, in regard to which the case is pending in the court of Consolidation Officer, Amethi and Deputy Director of Consolidation, Amethi and there is an interim order of the High Court also. It has also been alleged that the respondent No.2 has sown crop of urad on his land. The applicants came on 10.04.2018 at about 06:00 PM with lathi, danda and gun and started ploughing the crop of urad and on being confronted, they abused, threatened and attacked the complainant, therefore, the respondent No.2; complainant ran into his house. It has further been alleged that Ashraf, Rajjak sons of Lalla, Maksood Alam S/o Mustafa, Gazi Gaffar Ali Sher, sons of Sattar, Jabriel S/o Shareef, Ameen S/o Habeeb etc. saved the respondent No.2. It has also been stated in the complaint that on account of ploughing of crop, he suffered loss of about Rs.50,000/-. It has further been alleged that a complaint in this regard was given at the Police Station Jayas, District Amethi on 11.04.2018 but no action was taken by the police, therefore, a complaint was sent to the Superintendent of Police, Amethi, even then no action was taken, therefore, the accused may be summoned and punished.

10. The statement of complainant; Ismayl Khan under Section 200 CrPC was got recorded, in which he stated the aforesaid fact but there is no averment of attack by the applicants. In the statement, he has stated that Sarfaraz, Jameel, Jaleel, Shakeel, Nadeem, Shafeeq and Rashid came with lathi, danda and gun but name of Iftikar has not been stated. It has further been stated that they ploughed his agricultural farm by a tractor and on being confronted, they abused, therefore, the complainant ran and went into his house. He has also stated that he was not

beaten but after giving threats, the accused persons went away. Thus, the allegations of attack made in the complaint has not been alleged in the statement. It has also been stated that the land in dispute is recorded in the name of Mustafa since 1983, whereas in the complaint it has been stated that the respondent No.2 is in possession of the land in dispute. It has also been stated that an application was given on the next date before the Police Station but no proof thereof has been placed on record. It has further been stated that when no action was taken, an application was given about a month back to the Superintendent of Police. Thus, the application to the Superintendent of Police must have been given in the month of January, 2019 in regard to the incident of 10.04.2018.

11. The statements of Maksood Alam S/o Mustak and Gazi S/o Abdul Sattar have been got recorded under Section 202 CrPC. Maksood Alam narrated the above story as told by the complainant but he has not stated that the agricultural field was ploughed by tractor. He has further stated that the incident has been seen by Ashraf, Rajjak, Gazi, Gaffar, Ali Sher, Jabriel, Ameen etc. and they tried to save. He has also stated that if we would have not come, the applicants would have killed the respondent No.2.

12. The respondent No.2; complainant and Maksood Alam are accused in the aforesaid F.I.R. lodged by the applicant No.1 in regard to same incident of 10.04.2018 with similar allegations and charge sheet has been filed against both alongwith others, therefore, he is an interested witness.

13. Gazi S/o Abdul Sattar has supported the version of complaint and stated that he is an eye witness. However, contrary to the statement of the complainant, he stated the name of Iftikar also.

14. The complaint was filed on 04.01.2019. The statement of complainant was recorded on 14.02.2019, the statement of P.W.-1, Maksood Alam was recorded on 16.03.2019 and P.W.-2, Gazi was recorded on 03.05.2019 and it is apparent that the P.W.-2, Gazi has tried to fill up the lacuna in the statement of the complainant as well as P.W.-1, Maksood Alam.

15. Learned trial court, by means of order dated 13.04.2021, summoned the applicants without considering the aforesaid contradictions in the complaint and the statements of the complainant and witnesses. Perusal of the order dated 13.04.2021, contained as Annexure No.7, indicates that the application to the Superintendent of Police may have been given for the first time in the month of December, 2018, which was after about 8 months of incident. Thus, the impugned order dated 13.04.2021 has been passed by the learned trial court without appropriately considering and dealing with the evidence on record.

16. The aforesaid order dated 13.04.2021 was challenged by the applicant No.2; Jaleel S/o Sarfaraj in Criminal Revision No.12/2022, which has been dismissed by the learned Fifth Additional District and Sessions Judge, Raibareilly by means of order dated 18.04.2022 on the ground that the learned trial court has summoned

the applicants on the basis of the statements recorded under Section 200 and 202 CrPC. Another revision i.e. Criminal Revision No.139/2022 was filed by the applicant No.1 and the applicant Nos.3 to 8, which has also been dismissed by means of order dated 30.07.2022 holding that there is no need of examining the material available on record in depth at the time of passing of summoning order and only prima facie case against the respondent is to be seen and the revision filed by the accused Jaleel has already been dismissed and accordingly dismissed the revision. Hence the instant application under Section 482 CrPC has been filed.

17. The applicant No.1; Sarfaraz, though has claimed that he was aged about 101 years in 2022, according to which, presently he must have been aged about 104 years and his date of birth as recorded in his Aadhaar Card is 05.08.1921 but in the F.I.R. lodged by him, he himself stated that he was aged about 88 years. Be that as it may, he must have been more than 90 years of age at the time of alleged incident. It is also noticed that a disability certificate of the applicant No.2; Jaleel has been placed on record alongwith a supplementary affidavit. According to the disability certificate issued on 26.01.2019, he has permanent loco disability of 50%. It has been issued subsequent to the alleged incident. Thus, it has been alleged that the applicant No.1; Sarfaraz and applicant No.2; Jaleel apparently were not in a position to attack and run behind the respondent No.2 in the manner stated.

18. Perusal of complaint and statements of the complainant and the witnesses indicates that no specific role has been assigned to anybody. It has also not been shown either in the complaint or in the statements of the complainant and witnesses as to which of the applicant was having lathi, danda and gun. In the statement of the complainant, he has stated that the applicants ploughed his agricultural field by a tractor, whereas it has not been stated in complaint and statement of other witness. It has also not been disclosed as to who was driving tractor. The witnesses, who appeared as P.W.-1 and P.W.-2, have also nowhere stated that the applicants ploughed the agricultural field of the respondent No.2 by the tractor, therefore, there are material contradictions in the contents of the complaint and the statements of the complainant and witnesses but without considering the same, the applicants have been summoned.

19. Upon considering the aforesaid coupled with the fact that a civil dispute is going on between the parties in regard to land and F.I.R. has been lodged by the applicant No.1 in regard to the incident dated 10.04.2018 at about 06:00 in the evening on the very next day of the incident i.e. 11.04.2018 at 12:39 hours at the Police Station Jayas, District Amethi and no application dated 11.04.2018, as alleged by the respondent No.2, made to the police has been placed on record, it appears that the complaint has been filed in a counter blast to the aforesaid F.I.R. and to give colour of criminal to a civil dispute with the help of accused in the aforesaid F.I.R., which is nothing but an abuse of process of law.

20. The applicants have been summoned under Section 147, 504, 506 and 427 I.P.C.

21. Section 147 I.P.C. provides the punishment for rioting. Rioting has been defined under Section 146 I.P.C. as whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting. In the present case, firstly there is contradiction in regard to the presence of the applicants on the spot and secondly no force or violence could be shown to have taken place because the only allegation is that the applicants came on the spot and started ploughing the agricultural field of the respondent No.2 and on being confronted, they abused and threatened with dire consequences and attacked but there is no injury report on record and it has also not been alleged that the respondent No.2 had suffered any injury.

22. The Hon'ble Supreme Court, in the case of Lakshan Singh Vs. State of Bihar (Now Jharkhand); (2021) 9 SCC 191, has held that once the unlawful assembly is established in prosecution of the common object, each member of the unlawful assembly is guilty for the offence of rioting. The use of force, even though it be the slightest possible character by any one member of the assembly, once established as unlawful constitutes rioting. It is not necessary that force or violence must be by all but the liability accrues to all the members of the unlawful assembly. In the present case, not even a single instance of use of force has been pleaded or deposed or shown even before this Court.

23. Section 427 I.P.C. provides mischief causing damage to the amount of fifty rupees or upwards. It provides that whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Mischief has been defined under Section 425 I.P.C., according to which, whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief". As per Explanation 1, it is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not. As per Explanation 2, Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

24. The Hon'ble Supreme Court, in the case of Kashiben Chhaganbhai Koli Vs. State of Gujarat; (2008) 17 SCC 100, has held that so far as Section 427 I.P.C. is concerned, the expression "mischief" has been defined in Section 425 I.P.C. to mean an act done with intent to cause or knowing that it is likely to cause wrongful loss or damage to the public or to any person causes the destruction of any property etc. In the instant case the evidence on record clearly establishes that the sugarcane stems in the fields of the claimants were totally destroyed by

using a tractor, therefore, Section 427 I.P.C. is clearly established. In the instant case, the allegations have been levelled that on account of ploughing of crop by the applicants, the complainant suffered loss of Rs.50,000/- but the contents of the complaint and the evidence on record does not indicate as discussed above. There is contradiction in regard to the ploughing of crop and no material in support of the averments have been shown or placed on record. It has also not been disclosed as to who was driving the tractor. It is also very strange that if a person suffered a loss of Rs.50,000/-, he would keep mum for about 9 months, particularly when the F.I.R. was lodged by the applicants promptly and on the very next date of the incident.

25. Section 504 I.P.C. provides 'intentional insult with intent to provoke breach of the peace'. It is provided that 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. Section 506 I.P.C. provides 'Punishment for criminal intimidation'. It provides, 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 and if threat be to cause death or grievous hurt, etc. or to cause the destruction of any property by fire, or to cause an offence punishable with death or [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.

27. Criminal intimidation has been defined under Section 503 I.P.C., according to which, 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.

28. The Hon'ble Supreme Court, in the case of Fiona Shrikhande Vs. State of Maharashtra and Another; (2013) 14 SCC 44, has held that Section 504 I.P.C. 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. It has been further held 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 I.P.C. It is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole. The relevant paragraphs 12 to 14 are extracted here-in-below:-

"12. Having noticed the scope of Section 202 Cr.P.C., let us examine whether the ingredients of Section 504 IPC 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 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.

14. We may also indicate that it is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, *prima facie*, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504 IPC. It is not the law that a complainant should verbatim reproduce each word or words capable of provoking the other person to commit any other offence. The background facts, circumstances, the occasion, the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504 IPC."

29. The Hon'ble Supreme Court, in the case of Mohd. Wajid Vs. State of U.P.; (2023) 20 SCC 219, has held that in judging whether particular abusive language is attracted by Section 504 I.P.C., 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. Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504 I.P.C., if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace or 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 I.P.C. if he merely uses abusive language against the complainant. In regard to Section 506 I.P.C., it has been held that a bare perusal of Section 506 I.P.C. makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant. The relevant paragraphs 28 to 32 are extracted here-in-below:-

"28. 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.

29. 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.

30. 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.

31. 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 or 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)

32. A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant."

30. In the facts and circumstances of the present case as discussed above, the provisions of Section 504 and 506 I.P.C. cannot be said to have attracted because it could not be shown that the applicants have any intention to cause alarm to the complainant and what exactly was stated has not been disclosed in the complaint or the statements of the complainant and witnesses.

31. In view of above and considering the overall facts and circumstances of the case, this Court is of the view that the learned Magistrate has passed the impugned summoning order without considering the contents of the complaint, statements and as to whether the aforesaid offences are prima facie made out or not, whereas as discussed above they are not prima facie made out.

32. The Hon'ble Supreme Court has laid down certain parameters for quashing of the first information report or the complaint in para 102 in the case of *State of Haryana Vs. Bhajan Lal*; Supp (1) SCC 335, which are extracted here-in-below:-

"102...."(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 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 concerned Act (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 concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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.”

33. The Hon'ble Supreme Court, in the case of Mohd. Wajid Vs. State of U.P. (Supra), has also considered the above parameters and further observed that 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 F.I.R. or the criminal proceedings quashed 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.

34. The Hon'ble Supreme Court, in the case of Fiona Shrikhande Vs. State of Maharashtra and Another (Supra), has held that the Magistrate has to decide the question purely from the point of view of the complaint, without at all adverting to any defence that the accused may have and the magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint.

35. The Hon'ble Supreme Court, in the case of Mohanbhai Ganeshbhai Lakhani & Ors. Vs. State of Gujarat & Anr.; Criminal Appeal No(s)..... of 2024 (Arising out of SLP (Crl.) No(s).10982 of 2023), by means of the judgment and order dated 16.04.2024 has held that while considering a plea for quashing of F.I.R., it will not be just enough for the Court to look into the averments made in the FIR

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 and the Hon'ble Supreme Court found that in the said case dispute between the parties is admittedly a civil dispute, which has been given the colour of criminal case and the civil suit is also pending between the parties.

36. The Hon'ble Supreme Court, in the case of *Paramjeet Batra Vs. State of Uttarakhand and Others*; (2013) 11 SCC 673, has held that while exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. The relevant paragraph 12 is extracted here-in-below:-

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court."

37. The Hon'ble Supreme Court, in the case of *Rikhab Birani & Anr. Vs. State of Uttar Pradesh & Anr.*; (2025) SCC Online SC 823, has held that the summoning order has to be passed when the complaint or chargesheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course. The relevant portion of paragraph 20 is extracted here-in-below:-

"20.Further, there has to be a conscious application of mind on these aspects by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Though the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set criminal proceedings into motion. The Magistrate should carefully scrutinize the evidence on record and may even put questions to the complainant/investigating officer etc. to elicit answers to find out the truth about the allegations. The summoning order has to be passed when the complaint or chargesheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course."

38. The Hon'ble Supreme Court, in the case of Sharif Ahmad And Another vs State of U.P. and Another; (2024) SCC Online SC 726, has cautioned the Courts to check such attempts to make vague and ex facie false assertions.

39. Adverting to the facts of the present case, specific case was set up by the respondent No.2 that there is an old dispute between the respondent No.2 and the applicants in regard to the land and the respondent No.2 is in possession since 1983 and the case before the Consolidation Officer and Deputy Director of Consolidation, Amethi is pending consideration but without considering the same and making any enquiry in regard to the same and only on the basis of the vague allegations made in the subsequent paragraphs, the applicants have been summoned on a complaint filed by the respondent No.2, admittedly who is an advocate by profession. In view of the vague allegations made in the complaint as well as the statements and contradictions in them as discussed above and considering the over all facts and circumstances of the case, this Court is of the view that the impugned orders alongwith the proceedings of the Complaint Case No.9/2019 (new Case No.22/2019); Mohd. Ismayl Khan Vs. Sarfaraj and Others, pending in the court of learned Fast Track Court / S.D., Raibareilly, are nothing but abuse of the process of Courts, therefore, liable to be set aside.

40. The present application filed under Section 482 CrPC is allowed. The summoning order dated 13.04.2021 passed by learned Additional Civil Judge (Junior Division) / Judicial Magistrate, Raibareilly in Complaint Case No.9/2019 (new Case No.22/2019); Mohd. Ismayl Khan Vs. Sarfaraj and Others, under Sections 147, 427, 504, 506 I.P.C., Police Station Jayas, District Amethi, the order dated 18.04.2022 passed by learned Fifth Additional District and Sessions Judge, Raibareilly in Criminal Revision No.12/2022;

Mohd. Jaleel Vs. Mohd. Ismayl Khan and Others and the order dated 30.07.2022 passed by learned Second Additional Sessions Judge, Raibareilly in Criminal Revision No.139/2022; Sarfaraj and Others Vs. State of U.P. and another are hereby set aside alongwith the entire criminal proceedings of Complaint Case No.9/2019 (new Case No.22/2019); Mohd. Ismayl Khan Vs. Sarfaraj and Others, pending in the court of learned Fast Track Court / S.D., Raibareilly.

41. Let a copy of this order be communicated to the court concerned forthwith and in any case within a period of two weeks from today.