

**(2018) 02 KAR CK 0076**  
**In the Karnataka High Court**  
**Case No : 39 of 2018**

SRI GOVINDARAJU @ SHIVA & ORS

APPELLANT

Vs

STATE OF KARNATAKA

RESPONDENT

**Date of Decision :** 16-02-2018

**Acts Referred:**

[Code of Criminal Procedure, 1973](#), [Section 227](#) - Discharge  
[Indian Penal Code, 1860](#), [Section 506](#),  
[Section 504](#) - Punishment for criminal ,intimidation

**Citation :** (2018) 02 KAR CK 0076

**Hon'ble Judges :** K.N.Phaneendra

**Bench :** Single Bench

**Advocate :** MAHESH S, NASRULLA KHAN

**Final Decision :** Allowed

## **Judgement**

1. This revision petition is filed calling in question the order passed by LXX Additional City Civil and Sessions Judge, (CCH-71), Bengaluru, in

Spl.C.C.No.404/2015 in rejecting the application filed under Section 227 of Cr.P.C by the petitioners.

2. I have heard the arguments of learned counsel for the petitioners and the learned High Court Government Pleader for the respondent - State.

3. The respondent - Police have laid the charge sheet against all the accused persons for the offences punishable under Sections 3(1)(x) of SC/ST

(POA) Act and Sections 504 and 506 of IPC. The said case is now pending before the LXX Additional City Civil and Sessions Judge, (CCH-

71), Bengaluru.

4. Earlier on 25.09.2017, the trial Court has passed a cryptic order without considering any materials on record and rejected the application filed

under Section 227 of Cr.P.C. The said order was challenged before this Court. In fact, this Court vide order dated 10.11.2017 has specifically

mentioned as to how the application filed under Section 227 has to be considered, by, passing a detailed order directed the trial Court to pass

appropriate orders afresh on the said application. This Court has also specifically stated at paragraph No.5 that, the trial Court in order to

ascertain frame charge, there must be on record sufficient material so as to enable the court to apply its mind to the factual aspects of the case with

reference to the submissions made by the counsel and then only the court can pass appropriate orders. With that observation, the application was

restored. Vide order dated 23.12.2017, the trial Court has again passed an order rejecting the said application and ordered to frame charges

against accused Nos.1 to 4 under Sections 504 and 506 r/w Section 34 of IPC, Section 3(1)(x) of SC/ST (POA) Act, Section 354D of IPC and

also under Section 12 of POCSO Act particularly against accused No.1.

5. Even on looking into the orders passed by the trial Court, the trial Court has not even mentioned about the order passed by this Court as to

what are the guidelines issued by this Court and how the Court has to consider the application filed under Section 227 of Cr.P.C. Again passed

another cryptic order by simply stating that the Court has perused the FIR, complaint and statement of child victim recorded in the hospital,

photographs, wound certificate and letter of the Tahsildar and on perusal of them, the Court has come to a conclusion that prima facie case is

made out against the accused persons. Mere looking into the FIR, complaint and the statement of witnesses is not sufficient, unless it is said as to

what emanate from those materials and how those materials are sufficient for the Court to come to a conclusion that the application is devoid of

merits. That exercise has not been done by the trial Court in spite of specific direction issued by this Court. It is painful for this Court to say that,

the trial Judge has not even looked into what exactly the order passed by this Court and what he has to do. Therefore, the learned trial Judge has

made this Court to apply its mind to ascertain whether the order of the trial Court is proper or not. Even on remanding the matter to the trial Court,

once again it will add to the wasting of time both before the trial Court and this Court, because it will give another opportunity to the accused to

come back to this Court once again. Therefore, in order to avoid such contingency, this Court has to ascertain whether prima facie case is made out for framing of charges against all the accused persons as per the charge sheet papers. The Police have laid the charge sheet on the basis of the statement of witnesses particularly the injured eye witness and her parents.

6. Considering the statement of the witnesses, FIR and complaint, the victim girl has categorically stated that the accused No.1 is the resident of

same place where the victim was residing that is near Om Shakthi Temple, Hongasandra, Bangalore. The victim was studying in SSLC and

accused No.1 was always forcing her to love him and also marry him etc. In spite of her telling that she is a minor and not to follow her, he used to

follow her and always harassing her and calling her to come along with him and used to threaten her with dire consequences etc., He was also

abusing her with filthy language by referring to her caste. It is also stated that she disclosed the same to her father and mother and all of them went

to the house of accused persons and it is alleged that accused Nos.2 to 4 also abused them with filthy language by referring to their caste.

Particularly it is stated that on 04.05.2015 at about 5.30 pm., when the victim girl was alone in the house, at that time all the accused went to her

house and abused her by referring to her caste and thereafter, being humiliated by them, she went and poured kerosene on her and attempted to

commit suicide etc.,

7. On such allegation, the Police have recorded the statement of many witnesses by name Sri Ramu, Smt Saroja, Smt Nagarathna, Smt

Sumithramma, Smt Dhanalakshmi and Sri Srinivas and as well as one Sri Vishnumurthy and Sri Narayanappa.

8. In their statements, none of them have stated that they were present when the incident took place. They all in a typographical manner stated that

all these things being informed to them by the victim later. Therefore, on reading of above statements of all the witnesses, there is absolutely no

materials insofar as accused Nos.2 to 4 are concerned that they have abused the victim girl by referring to her caste in a public view. What was the

humiliation caused by them is not stated except stating that they used filthy language, specific abusive words are also not forthcoming in the

statement of victim girl. In this context, it is worth to refer a decision of the

Hon"ble Apex Court as to under what circumstances the offence under

Section 3(1)(x) of SC/ST (POA) Act is attracted. Section 3(1)(x) of SC/ST (POA) Act says that

3(1) - Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, (x) intentionally insults or intimidates with intent to

humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view"".

9. Though, the offence of humiliation cannot be ascertained at this stage, which require evidence, but another main ingredient of the provision is that

the offences should have been committed in any public place within the public view.

10. Of course, there is material to show that abusive words referring the caste of the victim being used in the house of the victim by the accused

persons and it is not in the public view. In this background, the Hon"ble Apex Court in the case of Asmathunnisa Vs. State of Andhra Pradesh

reported in AIR 2011 SC 1905, the Court has held at paragraph No.10 that

10. In any place, but within public view"", means the public must view the person being insulted for which he must be present and no

offence on the allegations under the said section gets attracted if the person is not present"".

11. It is specifically and categorically stated that the public view means a public should view the person being humiliated for which he must be

present and no offence on the allegations under the said section gets attracted if it is not within the public view.

12. Therefore, under the above said circumstances, except the above said allegation, there is no other allegation in respect of accused Nos.2 to 4

are concerned in order to attract Sections 504 and 506 of IPC as there is no allegation whatsoever stated by the victim girl that accused Nos.2 to

4 threatened her with dire consequences or they committed any offence under any law being in force.

13. Under the above said circumstances, there is no sufficient material at this stage to frame charges against accused Nos.2 to 4 for the above said

offences. The Court has to overall visualize the entire materials on record while considering the application under Section 227 of Cr.P.C., and

come to a conclusion whether facts constituting strong suspicion of commission

of offence to frame charges against the accused. Even mere suspicion is not sufficient to frame charges. It is worth to mention a decision of the Hon"ble Apex Court in the case of P.Vijayan Vs. State of Kerala & Another reported in AIR 2010 SC 663, where the Apex Court has observed in the following manner

If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal. Further, the words ""not sufficient ground for proceeding against the accused"" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex-facie disclose that there are suspicious circumstances against the accused"".

14. If the above said principle is applied to the present facts and circumstances of the case, though some suspicion arose whether the act of the accused would constitute any offence under Section 504 of IPC, but in my opinion, there is no such suspicion arose for the purpose of attracting Section 504 of IPC also. Therefore, the trial Court has not exercised its jurisdiction in a proper manner and it has not even peeped into the statement of witnesses and the allegations made in the charge sheet, but very mechanically once again stated that the Court has perused the documents and materials and found the prima facie case against the accused. Perusing the documents by the trial Court is not sufficient and what emanate on going through the material on record is a point that has to be elucidated in the orders, which is absent in this particular case is concerned.

15. Under the above said circumstance, I have sufficient reason to interfere with the order passed by the trial Court. Hence, the following

ORDER

Criminal revision petition is partly allowed.

The order passed by the trial Court insofar as accused No.1 is concerned is sustainable and the same is confirmed insofar as accused No.1. The

trial Court is directed to frame charges for the offences punishable under Sections 504, 506 and 354D of IPC, Section 3(1)(x) of SC/ST (POA)

Act and also under Section 12 of POCSO Act. However, as I have stated that there are absolutely no materials in order to implicate accused

Nos.2 to 4 for the above said offences, they are entitled to be discharged. Accordingly, petition filed under Section 227 of Cr.P.C., insofar it

relates to accused Nos.2 to 4 are concerned is hereby allowed and they are discharged for the offences under Sections 504, 506 and 354D of

IPC, Section 3(1)(x) of SC/ST (POA) Act and also under Section 12 of POCSO Act.