

(2023) 06 CAL CK 0040
In the Calcutta High Court
Case No : Criminal Revision No. 3608 Of 2019

Sugandha Dasgupta

APPELLANT

Vs

Tapan Pal

RESPONDENT

Date of Decision : 22-06-2023

Acts Referred:

Indian Penal Code, 1860 — Section 503, 504
Code Of Criminal Procedure, 1973 — Section 200, 204

Citation : (2023) 06 CAL CK 0040

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Malay Bhattacharyya, Sudipa Sengupta, Supratik Syamal, Mitali Mondal

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred praying for quashing of the proceeding being Complaint Case No. 5324/2019 under Sections 503/504 of Indian Penal Code 1860, presently pending before the Court of the Learned Judicial Magistrate, 6th Court at Alipore, South 24 Parganas.

2. The petitioner's case is that the petitioner is a bona fide employee, working in the capacity of Senior Employee, HR Manager in GE Power India Limited.

3. The genesis of the instant case dates back to 04.11.2019, when the opposite party filed a petition of complaint before the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas being Complaint Case No. 5324/2019, alleging commission of offences under Sections 503/504 of Indian Penal Code against the petitioner.

The allegations in the said petition of complaint are in brief to the effect that the opposite party worked as Commercial Proposals Analyst under GE Power India Limited, having its office at Millennium City, IT Park, Tower – IOI, 11th floor, DN

- 62, Section V, Salt Lake, Kolkata - 700091 and had been in service for 28 years. On 13.09.1995 at 4.30 pm, while travelling on duty for material inspection from Maheshtala to Howrah in a State bus, the opposite party no. 2 met with an accident near Howrah Bankim Setu and was immediately shifted to Howrah Orthopedic Hospital, then was transferred to Infirmy Nursing Home at Kolkata. The opposite party no.2 was further admitted and treated at AMRI Hospital, Salt Lake due to a brain stroke on 11.05.2014. The condition of the opposite party no.2 deteriorated day by day and he was advised not to work for more than 3 to 4 hours a day by the doctors. The opposite party no. 2 informed the said situation along with supporting medical documents to the concerned officer of his company. In spite of knowledge of the opposite party's condition, the petitioner sent a transfer letter dated 05.12.2018, thereby transferring the opposite party no. 2 from Kolkata to Noida with effect from 01.02.2019. The petitioner intentionally and forcefully issued a second notice dated 14.01.2019 and 21.01.2019, wherein the petitioner asked the opposite party no. 2 about reporting date and status. The opposite party received a letter dated 01.04.2019 mentioning therein "you stand relieved from Kolkata office effective from 09.04.2019 (close of business hour)" and by a further threatening letter the petitioner extended the reporting date to 18.04.2019 and the same was further extended till 12.06.2019. On 22.08.2019 the petitioner sent a show cause notice cum charge sheet and directed the opposite party no. 2 to submit within 3 days as to why no disciplinary actions will be initiated against him. The opposite party no. 2 sent his medical papers citing his health conditions by speed post. The petitioner did not consider the medical papers sent by the opposite party and stated them to be flimsy. The opposite party then sent a reply to the letter dated 22.08.2019 through his advocate vide letter dated 27.08.2019. The petitioner issued a second show cause on 10.09.2019 asking explanation from the opposite party in spite of knowing his health conditions and his inability to join the Noida Office, thus exerting mental pressure and causing mental agony upon the opposite party. The opposite party had been suffering mental agony and harassment due to the unlawful activity of the petitioner. The opposite party had on a previous occasion on 26.04.2019 lodged a complaint with Bidhannagar Police Commissionerate on being insulted by a security guard at the time of entering office at Millennium city IT Park. Upon police personnel appearing at the spot, they requested the petitioner to allow the opposite party to enter the office, but the petitioner did not allow him and as a result he returned back home. On 02.05.2019 also, the same incident was repeated and the security guards on duty did not allow the opposite party to enter the office. The opposite party informed the local police and the two security guards were taken into custody, where they had admitted committing the illegal activities as per the instructions of the petitioner. The petitioner had chosen wrong way and had been sending letters to the opposite party one after the other and binding time to reply the same so that the opposite party cannot find solution to the problems intentionally created by the petitioner.

4. That the opposite party's initial deposition vide solemn affirmation, in terms of Section 200 of Criminal Procedure Code was taken on record on 14.09.2019. After prima facie finding materials to proceed against the petitioner under Sections 503/504 of Indian Penal Code, by order dated 14.09.2019 passed by the Learned Judicial Magistrate, 6th Court Alipore, process was issued against the petitioner under the provisions enunciated under Section 204 of Criminal Procedure Code.

5. The petitioner states that:-

a) GE Power India Limited, formerly ALSTOM India Limited, is engaged in the engineering, construction and serving of power plants and power equipment. The company is engaged in the manufacture of steam generators and operates through power segments. The company has engineering centre's in Noida and Kolkata. Initially the company was in the name and style 'Flat India Ltd'. In the year 1994 Flat India Ltd. merged with Alstom Power India Limited and finally in November 2015 Alstom merged with GE Power India Limited and from time to time the employees and other staffs are absorbed in the new company being GE Power India Limited.

b) On 06.05.1991 the opposite party herein was given appointment as an 'Inspector' in the erstwhile concern being Flat India Ltd. and his service was confirmed as a permanent employee on 01.04.1992.

c) In the month of December 2018 the management decided to move the Kolkata based Campus team members to Noida and accordingly transfer letter was issued to the opposite party, transferring him from Kolkata to Noida.

d) In spite of acknowledging the transfer letter, the opposite party chose not to join the place of transfer at Noida and thus resulting in issuance of a reminder letter through email on 14.01.2019. Since the opposite party remained adamant, a second reminder letter through email was sent to the opposite party on 21.01.2019. Again on 01.04.2019 a transfer order was issued transferring the opposite party from Kolkata office to Noida w.e.f. 10.04.2019. Ultimately on 10.04.2019 the company through the petitioner extended the opposite parties reporting date to Noida till 18.04.2019 with a further caution that non-reporting to the place of transfer will be considered as absent resulting in loss of pay, the letter was duly communicated to the opposite party.

e) The opposite party did not respond to the communications made to him, rather on 26.04.2019 all of a sudden the opposite party tried to turn up for performing official duties at Kolkata office at Millennium City IT Park, Sector V, Salt lake City, Kolkata. But since the opposite party had been relieved from the Kolkata office w.e.f. 17.04.2019, he was not allowed to resume his duties at Kolkata office. Similar incident took place again on 02.05.2019 at the instance of the opposite party and this time also he was not allowed to resume his duty at Kolkata office.

f) The aforementioned incidents at the instance of the opposite party was brought to the notice of the concerned police station by the management and also to the Commissioner of Police, Bidhannagar Commissionerate by way of a written complaint dated 08.05.2019.

g) The matter did not end here. The opposite party though all along refused to join the office at Noida, which is evident from his actions. On 28.05.2019 the complainant through a letter to Mr. Apratim Sen (the manager posted at Noida and to whom the opposite party was required to report) requested for grant of medical leave for a period of six (6) weeks. By way of a letter dated 11.06.2019 addressed to the petitioner in reply to letter dated 29.05.2019 the opposite party informed the petitioner about the communication dated 28.05.2019 addressed to Mr. Apratim Sen and also demanded his salary for the month of May 2019. Again by a letter dated 23.06.2019 the opposite party requested Mr. Apratim Sen to extend his medical leave for further six (6) weeks.

h) The opposite party again on 10.07.2019 by way of letter requested Mr. Apratim Sen for release of his salary for the months of April 2019 (13 days), May and June 2019 and also claiming medical expenses. By another letter dated 20.07.2019 addressed to Mr. Apratim Sen, the opposite party requested him to sent Form 16 at his address and further demanded for release of his salary. In the said letter the opposite party held the office responsible in case of any penalties due to non submission of e-filing of his ITR.

i) On 22.08.2019 the petitioner being the Senior Employee HR Manager of the GE Power India Limited issued 'show cause cum charge sheet' to the opposite party by registered post with A/D stating the act and action on the part of the opposite party which amounts to gross indiscipline and disobedience of official instruction and also insubordination. The opposite party was asked to submit an explanation within three (3) days from the date of receipt of the notice

j) The petitioner further on 10.09.2019 issued a second show cause notice to the opposite party seeking his cogent and concrete explanation on the issue within three (3) days from the date of receiving of the show cause notice. This time also the opposite party through his Advocate submitted his reply but the reply was the repetition of the Advocate's letter dated 27.08.2019 which was miles away from the actual explanation sought for.

k) In the meantime a second reminder was issued by the opposite party through his Advocate by letter date 18.09.2019 to the petitioner directing her to describe with valid grounds and reasons concerning her behavior with the opposite party and further directed her to release the salary of the opposite party forthwith failing which she will suffer legal consequences.

l) Ultimately, considering the letters dated 27.08.2019 and 11.09.2019 by the opposite party through his Advocate, claiming to be the reply to the show cause's issued to the opposite party and finding the reply to be miles away from the actual explanation sought for and moreover, conduct on the part of the opposite

party being intolerable in the interest of maintaining discipline in the organisation, the management decided to terminate the opposite party from his service and accordingly the petitioner by way of a letter dated 10.10.2019 communicated the decision of termination to the opposite party.

m) By a letter dated 08.11.2019, the opposite party has been informed about the transmission of an amount to the tune of Rupees 7,57,615/- (Seven Lacs Fifty Seven Thousand and Fifteen) towards gratuity into his bank account. Till date it has not been disputed by the opposite party.

6. Mr. Malay Bhattacharya, learned counsel for the petitioner has submitted that the instant proceeding is prima facie bad in law and in the light of the un-refuted facts and circumstances so enunciated in the petition of complaint itself, the instant proceeding is liable to be quashed.

7. In the instant case, the contents of the petition of complaint, even if taken in its face value, do not satisfy the fundamental ingredients of the offences punishable under Sections 503/504 of Indian Penal Code. Thus, taking of cognizance of the complaint of the opposite party and further issuance of process against the petitioner is perverse in nature and as such the instant proceeding is liable to be quashed.

8. Mr. Supratik Syamal, learned counsel for the opposite party has submitted that there is sufficient materials against the petitioner to proceed towards trial and as such the revision is liable to be dismissed.

9. From the petition of complaint it is evident that the case of the complainant is that in spite of being seriously ill, he was transferred to Noida.

10. From the materials on record it appears that the complainant met with an accident on 13.09.1995 and suffered a brain stroke on 11.05.2014.

11. He was transferred with effect from 01.02.2019, after almost 5 years, when in December 2018, the management moved the Kolkata based campus team members to Noida.

12. The complainant filed the case against the petitioner as he had been allegedly insulted by the security guards on 26.04.2019 when he forcibly tried to enter the office after being relieved from the Kolkata office on 17.04.2019.

13. The offence alleged against the petitioner is under Section 503 and 504 IPC.

14. Section 503 of the Indian Penal Code, lays down:-

"503. Criminal intimidation.—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."

15. Section 504 of the Indian Penal Code, lays down:-

"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.

Ingredients of offence.— The essential ingredients of the offence under Sec. 504 are as follows:-

- (1) The accused intentionally insulted someone;
- (2) He thereby intended to give him provocation;
- (3) He knew that it was likely that such provocation would cause that person to commit a breach of the peace or to commit any other offence."

16. From the materials on record it is seen that there is no prima facie case against the petitioner as none of the ingredients required to constitute the said offences is present against the petitioner. The petitioner in no way endangered, intimidated or threatened the opposite party with any harm to compel him to do any unlawful act, nor did she insult him in any manner whatsoever. The conduct of the petitioner was in due course of her official duty.

17. CRR 3608 of 2019 is thus allowed.

18. The proceedings being Complaint Case No. 5324/2019 under Sections 503/504 of Indian Penal Code 1860, presently pending before the Court of the Learned Judicial Magistrate, 6th Court at Alipore, South 24 Parganas, is hereby quashed.

19. There will be no order as to costs.

20. All connected applications, if any, stands disposed of.

21. Interim order, if any, stands vacated.

22. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

23. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.