

## Pareshbhai Ravindrabhai Morker Versus Vs The State of Gujarat & Anr.

**Court:** Gujarat High Court

**Date of Decision:** Jan. 22, 2025

**Acts Referred:** Code of Criminal Procedure, 1973 â€” Section 155(2), 156(1), 482  
 Indian Penal Code, 1860 â€” Section 114, 323, 447, 504, 506, 506(2)

**Hon'ble Judges:** Divyesh A. Joshi, J

**Bench:** Single Bench

**Advocate:** Kruti M Shah, Soaham Joshi

**Final Decision:** Allowed

### Judgement

Divyesh A. Joshi, J

1. Draft amendment is allowed. To be carried out forthwith.

2. Rule. Learned APP, Mr. Soaham Joshi for respondent no.1 " State of Gujarat waives service of notice of rule.

3. By way of preferring present application under Section 482 of the Code of Criminal Procedure, 1973  
 ("CrPC" for short), the applicant -

original accused no.1, seeks to invoke the inherent powers of this Court, inter alia, praying for quashing of the FIR  
 being C.R. No.

11214042210009/2021 registered with Olpad Police Station, Surat for the offence punishable under Sections 323, 506,  
 506(2), 447 and 114 of the

Indian Penal Code ("IPC" for short) and subsequent proceeding being Criminal Case No.3273/2024  
 pending before the court of learned Chief

Judicial Magistrate, Olpad pursuant to filing of the chargesheet.

4. Heard learned advocate, Ms. Kruti Shah for the applicant and learned APP Mr. Soaham Joshi for the respondent  
 " State of Gujarat. Though

served, none appears for the respondent no.2 " original complainant.

5. The gist of the FIR is as under,

On 01.01.2021, when the complainant had made a call the accused, Hardik to ask him to call accused, Ilesh, the said  
 accused, Hardik started abusing

him and asked him to come at seashore, where the complainant and his friend, Paresh had gone but they were  
 beaten by the accused by giving kick

and first blows and, thereafter, other accused reached there in four-wheeler car and also caused injury to the  
 complainant and one Mehul, who tried to

rescue the complainant and also caused damage to their car and, thereafter, they were threatened by the accused with dire consequences.

6. Learned advocate, Ms. Shah submitted that the impugned FIR is nothing but a gross abuse and misuse of the process of law and in fact, there is

delay in registration of the impugned FIR because the so-called incident had taken place on 01.01.2021, for which, FIR has been lodged on 05.01.2024,

which suggests false implication of the applicant herein. She submitted that the FIR is lodged against total six accused persons, wherein the applicant

is shown as accused no.1. She submitted that immediately after registration of the impugned FIR, the applicant has approached this Hon'ble Court

by filing present application, wherein notice was issued and pending this application, the investigation was continued and the concerned Investigating

Officer filed chargesheet against the accused persons except the present applicant specifically mentioning that the application is pending against the

applicant. She further submitted that after filing of the chargesheet, the case was proceeded against those accused and at the end of trial, those

accused persons have been acquitted by the competent criminal court, copy of said order is placed on record. She referred to the order of acquittal

passed in case of other accused and submitted that the prosecution witnesses examined on their behalf have not supported the case of the prosecution

and turned hostile and thus, the prosecution has failed to prove charges leveled against those accused, who have actively participated in the

commission of crime. He submitted that so far as the role attributed to the present applicant is concerned, it is alleged that in the evening of the day of

incident, the applicant had administered threats to one of the victim viz., Vimal. She further submitted that from the allegations leveled in the impugned

FIR, it is found out that the complainant had tried to resolve the issue but as FIR has been lodged against them, the impugned FIR has been lodged by

the complainant. She, however, submitted that merely by such allegation of threats, particular word/ phrase used by the applicant at the time of

commission of crime is required to be incorporated in the body of the FIR, but same is missing, therefore, the provision of Sections 504 and 506(2) of

the IPC are not attracted qua the applicant. She further submitted that as stated above, main accused have already been acquitted by the competent

criminal court after full-fledged trial, therefore, the chances of conviction are very bleak and no fruitful purpose would be served keeping the

prosecution against the applicant.

7. At this stage, learned advocate submitted that considering the principle of law laid down by the Hon'ble Apex Court in case of State of

Haryana Vs. Bhajan Lal, reported in AIR 1992 SC 604 as well as in case of R.P. Kapur Vs. State of Punjab, reported in AIR 1960 SC 866 : 1960 Cri

LJ 1239, the prosecution launched against the applicant is required to be quashed and set aside.

8. On the other hand, learned APP Mr. Joshi has objected present application with vehemence and submitted that specific role of the applicant is

mentioned in the body of the FIR. He submitted that pending this application, the investigation was carried out and the chargesheet has been filed and

the papers of the chargesheet clearly goes on to show the involvement of the applicant in the commission of crime. He submitted that the alleged

incident had taken place in two parts i.e. in first part, the main accused had beaten the complainant and other witness, whereas in second part, the

accused had administered threats to one of the witnesses, Vimal in evening. It is, therefore, urged that no discretion may be exercised in favour of the

applicant and the present application may be rejected.

9. Having heard learned advocates for the parties and having gone through the material and evidence available on record, the staple question arises for

consideration as to whether the FIR and consequential proceedings are liable to be quashed and set aside in exercise of extraordinary and inherent

jurisdiction vested under Section 482 of the Code.

10. At the outset, it is apt to refer the law laid down by the Hon'ble Apex Court in case of Bhajan Lal (supra). The relevant para reads as under:

“In the backdrop of the interpretation of the various relevant provisions of the Code under Ch.XIV and of the principles of law

enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent

powers u/s 482 of the Code of Criminal Procedure which we have extracted and reproduced above, the following categories of cases are

given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to

secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible

guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 F.I.R. 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,

(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.Ã¢â‚¬â€œ

11. The HonÃ¢â‚¬â€œble Apex Court in case of R.P. Kapur (supra) has summarised some categories of cases where inherent power can and should be

exercised to quash the proceedings, which are as under,

Ã¢â‚¬â€œ(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute

the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails

to prove the charge.Ã¢â‚¬â€œ

12. In view of the ratio enunciated by the HonÃ¢â‚¬â€œble Apex Court in the aforesaid decisions as well as other decisions, it is required to be noted that

whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Criminal Procedure Code to get the FIR

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. The Court while exercising its

jurisdiction under Section 482 of the CrPC need not restrict itself only to the stage of a case but is empowered to take into account the overall

circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Therefore bare perusal

of the contents of the FIR, it is found out that none of the ingredients to constitute the offences alleged are spelt out.

13. Bare perusal of the contents of the impugned FIR coupled with the submissions canvassed by learned advocates for the parties, some facts, which

are not in dispute, are emerged, which are required to be taken into consideration for deciding the present application. As stated above, the impugned

FIR has been lodged against total six accused persons for the alleged offences under Sections 323, 506, 506(2), 447 and 114 of the Indian Penal Code

alleging inter alia that the accused have beaten the complainant and other witnesses and, thereafter, threats were administered by the accused.

Further, the allegations leveled against the applicant are that the applicant had administered threats to one of the witnesses, Vimal and except this,

there is no allegation leveled against the applicant in entire body of the FIR. Over and above that, it is required to be noted that the statement of said

Vimal has been recorded by the Investigating Officer during the course of investigation, however at the time of trial, the said witness has not been

examined by the prosecution. Further as stated above, except the present applicant, trial against other accused has already been concluded and the

learned Judge concerned has recorded acquittal of those accused and the said order has attained finality as neither the State nor the original

complainant has challenged it before any higher forum. I have also considered the order of acquittal, which clearly goes on to show that the trial was

conducted against the main accused, who had beaten the complainant and other witness and serious allegations were leveled and despite the said fact,

after full-fledged trial, they have been acquitted by the competent criminal court. So far as the present applicant is concerned, as stated above, only

allegation leveled against the applicant is administering threats to witness and nothing more than that. Further, there is no specific allegation as to

which word and/or phrase was used by the applicant, which attracts the provision of Sections 504 and 506(2) of the IPC. Not only that, despite notice

being duly served upon the respondent no. 2, there is no appearance on his behalf. In light of this, the averments made in the present application

remain unchallenged and uncontroverted by the respondent no.2.

14. Now, I would like to refer to the decision of the Hon'ble Apex Court in the case of Vikram Johar Vs. State of Uttar Pradesh & Anr., reported

in AIR 2019 SC 2109, wherein the Hon'ble Apex Court has observed that for the purpose of invoking the provisions of Section 504 IPC, the basic

ingredients are required to be satisfied, which are (i) intentional insult, (ii) the insult must be such as to give provocation to the person insulted, and (iii)

the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The following

ingredients are required to be satisfied so as to invoke the provisions of Section 506. (i) that the accused threatened some person, (ii) that such threat

consisted of some injury to his person, reputation or property; or to the person, reputation or property of some one in whom he was interested; and (iii)

that he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any

act which he was legally entitled to do as a means of avoiding the execution of such threat. A plain reading of the allegations in the FIR in question, in

the opinion of this Court, does not satisfy all the aforesaid basic and essential ingredients so as to invoke the provisions of Section 504 and 506(2) of

the IPC.

15. A useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of *Fiona Shrikhande & Anr. Vs. State of*

*Maharashtra*, reported in 2013 (3) GLH 107, wherein the Hon'ble Supreme Court has observed in Paragraph No.13 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."

16. It is well settled that where the Court finds that 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 and/or 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/her due to private and personal grudge, in that event, the Court should exercise inherent powers under

Section 482 of the Code by quashing the FIR/complaint. Here in the instant case, from bare reading of the contents of the FIR in question, it transpires

that no offence much less the offence under Section 506 are made out against the applicants accused.

17. The Coordinate Bench of this Court, in the case of Dineshbhai @ Mukeshbhai Jitabhai Patel Vs. State of Gujarat & Anr., vide judgment and order

dated 05.04.2016 passed in Special Criminal Application No.4481 of 2014, observed and held as under:

14 The second question that falls for my consideration is whether the offence punishable under Sections 504 and 506(2) of the I.P.C.

could be said to have been made out.

15 Section 504 of the I.P.C. 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. 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. 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. 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 *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

In *Guranditta v. Emperor*, AIR 1930 Lah 344 (2): (32 Cri. LJ 62), it was observed that in dealing with a case under Section 504, I.P.C. the

court should try to find out what in the ordinary circumstances would have been the effect of abusive language used. *Pichai Pillai v.*

*Ramaswamy Ayyangar* (1941) 42 Cri. LJ 48 (Mad.) relied on by the learned Magistrate is no authority for any proposition that no offence

is committed under Section 504, I.P.C. by the accused if he uses abusive language against the complainant. In that case there was a

discussion between the accused Bill Collector and the complainant in regard to the amount due by the complainant towards tax collectable

by the Bill Collector. In the course of that discussion, the Bill Collector shouted against the complainant saying shameless fellow, I will shoe

you. The details of the discussion and the exact circumstances leading to the shouting by the accused are not available from the brief

judgement reported. It is also not known as to where exactly the occurrence took place in that case. (vide *Karumanchi Veerangaiah vs.*

*Katta Mark & Ors.*, 1976 Cr. LJ 1690)

16 In the case of *Ronak Ashok Kedia v. State of Gujarat* [Criminal Miscellaneous Application No.4145 of 2012 decided on 19th November,

2014], I have explained as to what would constitute the offence punishable under Section 506(2) of the I.P.C. I may quote the observations

made in paras 10, 11 and 12 as under:

“10. The above takes me to consider whether any case is made out so far as the offence under Section 506(2) of the IPC is concerned.

Section 506 reads as under:-

S.506. 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 the threat be to cause death or grievous hurt, 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.

11. The essential ingredients - The offence of criminal intimidation has been defined under Section 503 I.P.C and Section 506 I.P.C

provides punishment for it.

Section 503 reads as under:-

“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 threats, commits criminal

intimidation.

Explanation: - A threat to injure the reputation of any deceased person in whom the persons threatened is interested, is within this section.

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.

12. A bare perusal of Section 506 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 an accused had an intention to cause alarm to the complainant. Mere threats given by

the accused not with an intention to cause alarm to the complainant, but with a view to deterring him from interfering with the work of

construction of the wall, which was undertaken by the accused- applicant, would not constitute an offence of criminal intimidation. In the

entire FIR, there is no whisper of any allegation that the threats which were administered actually caused any alarm to the first informant

and he felt actually threatened.

18. Thus in view of the above facts and in view of the ratio enunciated by the Hon'ble Apex Court as well as this Court in the aforesaid decisions,

I am of the opinion that continuation of further proceedings pursuant to the said FIR will cause greater hardships to the petitioner and no fruitful

purpose would be served if such further proceedings are allowed to be continued. The Court must ensure that criminal prosecution is not used as

instrument of harassment or for seeking private vendetta or with ulterior motive to pressurize accused or to settle the score. Even from bare perusal of

the FIR itself, none of the ingredients to constitute the alleged offence are spelt out and the chances of conviction of the applicant is very bleak. It is

also well-settled that mere threat is no offence. Based on the facts and circumstances of the case, this Court has no hesitation in holding that in

absence of basic and essential ingredients to constitute any offence, continuation of proceedings would be miscarriage of justice. Therefore, the

present application deserves to be allowed.

19. In the result, the present application is allowed. The impugned FIR being C.R. No. 11214042210009/2021 registered with Olpad Police Station,

Surat and subsequent proceeding being Criminal Case No.3273/2024 pending before the court of learned Chief Judicial Magistrate, Olpad pursuant to

filing of the chargesheet are hereby quashed and set aside.

20. Rule is made absolute. Direct service is permitted.