

(2016) 07 SHI CK 0082

High Court of Himachal Pradesh

Case No: Cr.MMO No.4058 of 2013-G

Kashmir Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision: July 12, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 504, Section 506

Citation: (2016) 4 HimLR 2237

Hon'ble Judges: Mr. P.S. Rana, J.

Bench: Single Bench

Advocate: Mr. R.K. Sharma, Dy. A.G, for the Non-Petitioner No. 1; Mr. H.S. Rana, Advocate, for the Non-petitioner No. 2; None despite service, for the Non-petitioner No. 3; None despite service, for the Non-petitioner No. 4; In person, for the Petitioner

Final Decision: Disposed Off

Judgement

P.S. Rana, J. - Present petition is filed under Section 482 Code of Criminal Procedure 1973 for quashing of summon order relating to criminal offence under Sections 504, 506 IPC dated 30.06.2012 passed by learned Judicial Magistrate 1st Class Court No.7 Shimla (H.P.) in FIR No. 4 of 2011 dated 03.01.2011. Brief facts of the case:

2. Sh. Jiwan Lal Special Public Prosecutor Vigilance Headquarter Shimla (H.P.) filed criminal complaint against accused Kashmir Singh alleging therein that complainant Jiwan Lal and accused Kashmir Singh at Hira Nagar Shimla are jointly constructing residential house and after completion of construction same would be divided as per draw of lot. It is alleged that some differences occurred between accused and complainant Jiwan Lal for procurement of certain articles of construction and finally it was agreed to appoint a person who would help in construction of house. It is further alleged that Sh. Kamal Saklani was appointed and thereafter both the complainant and accused paid him their due share of amount. It is further alleged

by complainant Jiwan Lal that prior to completion of construction work and prior to division of residential house by way of draw of lot accused Kashmir Singh illegally tried to occupy best portion of building and thereafter complainant Jiwan Lal approached Civil Court. It is further alleged that learned Civil Judge Shimla granted ad interim injunction against accused Kashmir Singh on 16.12.2010 and due to holiday on 17.12.2010 ad interim injunction could not be served upon accused Kashmir Singh. It is further alleged that on 18.12.2010 when ad interim injunction was to be served upon accused Kashmir Singh then accused got irritated and misbehaved and abused the complainant Jiwan Lal in the presence of Court officials and police officials. It is further alleged that accused threatened the complainant to break his legs and also abused the complainant with derogatory and defamatory remarks. FIR No.4 dated 03.01.2011 was registered under Sections 504 and 506 IPC. Investigation was completed and investigation report under Section 173 Cr.PC filed before Judicial Magistrate. Learned Judicial Magistrate 1st Class Court No.7 Shimla (H.P.) on dated 30.06.2012 held that after perusal of the challan and other documents annexed with the challan there are sufficient grounds for proceeding against accused under Sections 504 & 506 IPC. Feeling aggrieved against summoning order present petition under Section 482 Code of Criminal Procedure filed by accused.

3. Court heard petitioner in person and learned Deputy Advocate General appearing on behalf of non-petitioner No.1 and learned Advocate appearing on behalf of non-petitioner No.2 and also perused the entire records carefully.

4. Following points arise for determination:

1) Whether petition filed under Section 482 Cr.PC is liable to be accepted as mentioned in memorandum of grounds of petition?

2) Final order.

Findings upon point No.1 with reasons:

5. Submission of petitioner that as per criminal complaint incident took place on 18.12.2010 and police station is at a distance of 200-300 meters from the place of incident and criminal complaint was filed on 20.10.2010 after inordinate delay and on this ground order of learned Trial Court dated 30.06.2012 for summoning the accused under Sections 504 and 506 IPC be set aside is rejected being devoid of any force for reasons hereinafter mentioned. It is held that delay in filing complaint would be explained by the prosecution during trial of the case. It is held that at the time of passing summoning order Court has to simply see sufficient grounds for proceeding against accused as per statements of prosecution witnesses and documents annexed with the investigation report filed under Section 173 Code of Criminal Procedure 1973.

6. Submission of petitioner that CD is neither placed on record nor supplied to accused when demanded under Right to Information Act and on this ground petition be allowed is rejected being devoid of any force for reasons hereinafter mentioned. Court is of the opinion that accused has legal right for demand of all the documents annexed with the challan. Court has perused the original file of learned Trial Court. Two CDs are annexed with the challan file and learned Trial Court is under legal obligation to supply copy of CD to accused in accordance with law. It is held that copy of CD would be supplied to accused by learned Trial Court in accordance with law because two CDs are part and parcel of the challan filed by the investigating agency.

7. Submission of petitioner that words "misbehave and abuse" do not fall within definition of Section 506 IPC and on this ground order of learned Trial Court summoning accused be quashed is rejected being devoid of any force for reasons hereinafter mentioned. It is proved on record that learned Trial Court summoned accused under two criminal offences (1) 504 IPC, (2) 506 IPC. Section 504 IPC comprises of following ingredients: (1) Intentional insult (2) That insult must be such as to give provocation to the person insulted. (3) That accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. See **AIR 2014 SC 957 title Fiona Shrikhande v. State of Maharashtra**. Even as per section 506 IPC prosecution is under legal obligation to prove that criminal intimidation was given by accused and threat was given by accused to cause death or grievous hurt. At the stage of summoning the accused learned Trial Court is under legal obligation to give findings whether there are sufficient grounds for proceeding against accused as per statements recorded by prosecution during investigation and as per documents annexed with challan.

8. Submission of petitioner that co-respondents No.3 & 4 prepared challan at the instance and influence of complainant Sh. Jiwan Lal with ulterior motive and malafide intention cannot be decided at this stage of the case because same is complicated issue of fact. It is well settled law that complicated issue of fact is always decided by learned Trial Court after giving due opportunity to both parties to lead evidence in support of their case.

9. Submission of petitioner that present complaint is registered against accused to pressurise the petitioner so that petitioner should abandon his share in the building and that accused should not reside in the residential building also cannot be decided at this stage of the case because same is complicated issue of fact and complicated issue of fact is always decided by the learned Trial Court after giving due opportunity to both parties to lead evidence in support of their case.

10. Submission of petitioner that call details collected from the BSNL should be summoned in the present case at this stage of case is rejected being devoid of any force for reasons hereinafter mentioned. It is held that accused is at liberty to file application before learned Trial Court for summoning of call details from the BSNL

when case will be fixed for defence evidence by learned Trial Court.

11. Submission of petitioner that investigation in the present case was initially conducted by ASI Baldev Singh who has submitted cancellation report to SHO Police Station Boileauganj and thereafter HC Sushil Kumar on dated 26.02.2012 has again recommended closure of the case and on this ground petition filed under Section 482 Cr.PC be allowed is rejected being devoid of any force for reasons hereinafter mentioned. It is held that subsequent material facts can reopen criminal case in accordance with law. Accused is at liberty to summon ASI Baldev Singh and HC Sushil Kumar when case will be listed by learned Trial Court for defence evidence in order to prove his innocence. It is well settled law that further investigation can be conducted under Section 173(8) Code of Criminal Procedure 1973 relating to further oral or documentary evidence. It was held in case reported in **2006(7) SCC 296 title Popular Muthiah v. State** that Court should not interfere with the statutory powers of investigation agency. See **1999 Criminal Law Journal SC 3661 title B.S.S.V.V.Vishwandadha Maharaj v. State of A.P. & Others.**

12. Submission of petitioner that co-respondent No.2 with ulterior motive to defame the petitioner had also published the matter in daily newspaper and cooked a false and frivolous story against the petitioner also cannot be decided at the stage of case because same is complicated issue of fact and complicated issue of fact inter se parties would be decided by learned Trial Court after giving due opportunity to both parties to lead evidence in support of their case.

13. Submission of petitioner that allegations made in the complaint and evidence collected by the investigating agency during investigation oral as well as documentary did not prima facie constitute offence under Sections 504 & 506 IPC and on this ground petition be allowed is also rejected being devoid of any force for reasons hereinafter mentioned. Court has carefully perused the statement of Jiwan Lal placed on record. Sh. Jiwan Lal has specifically stated in his statement that accused has threatened to kill him and also used abusive language against him. Court has also carefully perused the statement of Chander Mohan Sharma placed on record. Sh. Chander Mohan Sharma has specifically stated that accused had abused the complainant and also threatened the complainant to kill him. There is recital in the statement of Chander Mohan Sharma that accused threatened the complainant that he would break the legs and arms of complainant namely Jiwan Lal. Court has also carefully perused the statement of Mehboob Ali Khan placed on record. There is positive recital in the statement of Mehboob Ali Khan that Kashmir Singh Thakur had used abusive language and also threatened the complainant to kill him and threatened that he would break the legs and arms of complainant namely Jiwan Lal. Court has also carefully perused the statement of Kuldeep Singh placed on record. There is recital in the statement of Kuldeep Singh that accused had used abusive language to complainant and also threatened the complainant to kill him. Court has also carefully perused the statement of Kundan Lal placed on record.

There is recital in the statement of Kundan Lal that accused had used abusive language to complainant and also threatened the complainant to kill him and threatened that he would break the legs and arms of complainant namely Jiwan Lal. Above stated statements along with two C.Ds and site plan are sufficient grounds for proceeding against accused under Sections 504 & 506 IPC.

14. It was held in case reported in **AIR 1976 SC 1947 title Nagawwa v. Veeranna Shivalingappa Konjalgi** that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in complaint and documents annexed in support of the complaint. It was held that Magistrate should satisfy whether there are sufficient grounds for proceedings against the accused or not under Section 204 Code of Criminal Procedure 1973. It was held that Magistrate should not enter into detailed discussion on merits or demerits of the case. It was held that accused has no locus standi and is not entitled to be heard whether process should be issued against him or not under Section 204 Code of Criminal Procedure 1973. Also see **AIR 1963 SC 1430 title Chandra Deo Singh v. Prokash Chandra Bose & Another**. Also see **AIR 2016 SC Weekly 122 title Madan Razak v. State of Bihar**.

15. Submission of petitioner that offence under Sections 504 & 506 IPC are non-cognisable offence and bailable offence and investigation by investigating agency is not permissible under law unless directed by Judicial Magistrate is also rejected being devoid of any force for reasons hereinafter mentioned. Section 506 IPC is amended by H.P. Government. The Governor Himachal Pradesh in exercise of powers vested in him under Section 10 of Criminal Law Amendment Act 1932 has declared offence under Section 506 IPC within Himachal Pradesh as cognisable criminal offence vide notification No.Home(C) F(8) 1/77 dated 09.03.1978. Police officer has authority to arrest the accused without any warrant under cognisable criminal case. In view of above stated facts and case law cited supra point No.1 is answered in negative.

Point No.2 (Final Order).

16. In view of findings upon point No.1 above present petition filed under Section 482 Code of Criminal Procedure 1973 is dismissed. Order of learned Trial Court dated 30.06.2012 is affirmed and it is held that there are sufficient grounds for proceeding against accused under Section 204 Code of Criminal Procedure 1973 qua criminal offence punishable under Sections 504 & 506 IPC. Observations made herein above will not effect merits of the case in any manner and will be strictly confined for disposal of petition filed under Section 482 Code of Criminal Procedure 1973. Parties are directed to appear before learned Trial Court on 29.07.2016. Cr.MMO No. 4058/2013-G is disposed of. Pending application(s) if any also disposed of.