
(2011) 03 GUJ CK 0022

Gujarat High Court

Case No: Criminal Miscellaneous Application No. 2322 of 2006

P.S.I.A.B. Vataliya

APPELLANT

Vs

State of Gujarat and
Another

RESPONDENT

Date of Decision: March 7, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 190, 197, 482
- Penal Code, 1860 (IPC) - Section 114, 170, 216(A), 218, 219

Citation: (2011) 3 Crimes 209

Hon'ble Judges: P.P. Bhatt, J

Bench: Single Bench

Advocate: Hardik A Dave, for the Petitioner No. 1, for the Appellant; J.K. Shah, APP for the Respondent No. 1 and C.H. Vora, Advocate for the Respondent No. 2, for the Respondent

Final Decision: Allowed

Judgement

P.P. Bhatt, J.

The present application is filed u/s 482 of the Code of Criminal Procedure, 1973 ("the Code" for short) to quash and set aside the complaint at Annexure "A" being Criminal Case No. 1125 of 2003 pending before the Court of learned JMFC, Gandhinagar and summons/process issued therein u/s 504 of Indian Penal Code qua the present Petitioner.

2. The aforesaid complaint, being Criminal Case No. 1125 of 2003, was instituted for the offences punishable under Sections 170, 216(A), 218, 219, 419, 420, 455, 504, 506(2) and 114 read with Section 34 of Indian Penal Code against total five accused persons. The Petitioner herein is accused No. 4, against whom summons/process u/s 504 of Indian Penal Code has been issued.

3. Learned Advocate Shri Hardik A Dave for the Petitioner has pointed out facts stated in Para 4 of the petition and submitted that the Petitioner is accused No. 4 in the complaint filed by Girdharibhai Khataumal Chandak Respondent No. 2 herein. The allegations made in the complaint dated 28.1.2003 against the present Petitioner are with regard to use of abusive language after having called him (complainant) in the police station. On the basis of this complaint, the learned JMFC has passed an order for issuance of process u/s 504 of Indian Penal Code against the Petitioner "accused No. 4. It is submitted that the averments made in Para 4 of the complaint do not constitute an offence u/s 504 of Indian Penal Code. Learned advocate for the Petitioner has referred to Section 504 of Indian Penal Code and submitted that from the allegations made against the Petitioner in the complaint, none of the ingredients are emerged so as to attract the requirement of Section 504 of Indian Penal Code. However, the learned JMFC, Gandhinagar has issued process against the present Petitioner/accused No. 4. The learned Advocate for the Petitioner made following submissions:

3.1 That looking into the allegations against the Petitioner and taking the same to-be true, it is stated that the Petitioner has used abusive language against the complainant/Respondent No. 2 herein after calling the Respondent No. 2 to Pethapur Police Station. It is respectfully sub-mitted that in the instant case cognizance of the offence against the present Petitioner would require previous sanction of the State Government u/s 197 of the Code.

3.2 That the JMFC has wrongly placed reliance on the decision of the Mumbai High Court reported in 1991 Cri LJ 1481 and has wrongly held that sanction would not be required to prosecute the Petitioner in the instant case.

3.3 That the Hon"ble Supreme Court has in a catena of decisions held that sanction as required u/s 197 of the Code is mandatory and that the Magistrate cannot take cognizance of the offences against public servants without the necessary sanction. In this context, it is submitted that it is now well settled that Section 197 of the Code culls out an exception to Section 190 of the Code and no Court can take cognizance u/s 190 of the Code if the offence is alleged against a public servant without sanction as envisaged u/s 197 of the Code. Thus, the learned Judge has erred in considering the mandatory requirement of Section 197 and failed to consider in its true perspective.

3.4 It is respectfully submitted that the ingredients of Section 504 of Indian Penal Code are intentional insult and provocation intending and knowing that such provocation would cause a person to break public peace or to commit any other offence and therefore, even otherwise no offence much less an offence u/s 504 of Indian Penal Code can be said to be made out against the present Petitioner.

3.5 That in the instant case, even if all the averments as stated in the complaint are taken to be completely true, then also it cannot be said that the Petitioner has intentionally insulted and given provocation to the present complainant Respondent No. 2

as would cause him to break public peace or to commit any other offence. It is respectfully submitted that the menswear in the said case is missing as by no stretch of imagination can it be said that the provocation given by the present Petitioner was sufficient to cause or to break the public peace or to commit any other offence.

3.6 That it is well settled in a catena of judgments that for an offence u/s 504 of Indian Penal Code, it is very necessary for the complainant to state the exact words which were used by the accused so that the Court may know whether the words used for the insults were sufficient to constitute an offence u/s 504 of Indian Penal Code. In the instant case, the words used by the present Petitioner are not stated in the complaint and therefore, the essential ingredient of a complaint u/s 504 of Indian Penal Code is missing.

3.7 That several Courts have quashed complaints u/s 504 of Indian Penal Code only on the ground that the words used by the accused have not been stated in the complaint and therefore, whether the words or the insults would be sufficient to constitute an offence u/s 504 of Indian Penal Code cannot be inferred.

3.8 Learned advocate for the Petitioner has referred to and relied upon the following judgments in support of his arguments:

- (i) [Prem Pal Singh and Others Vs. Mohan Lal,](#)
- (ii) [Jodh Singh and Others Vs. State of Uttar Pradesh and Another,](#)
- (iii) [Amitabh Adhar and Another Vs. NCT of Delhi and Another,](#)

4. As against that, learned Advocate Shri CH Vora for Respondent No. 2 has submitted that the allegations made in Para 4 of the complaint constitute offence punishable u/s 504 of Indian Penal Code and therefore, learned JMFC has rightly issued process in the matter. Learned advocate Shri Vora has also referred to Section 504 of Indian Penal Code while making submissions and submitted that the allegations made in the complaint are more than sufficient for issuance of process u/s 504 of Indian Penal Code. It is submitted that use of abusive language/words amounts to insult and therefore, the Court of learned JMFC has rightly taken cognizance of the matter and issued process against the Petitioner.

4.1 Learned Advocate Shri Vora has also vehemently submitted that the judgments cited by learned Advocate for the Petitioner are not applicable to the facts and circumstances of the present case and these judgments are nothing but re-writing of Section 504 Indian Penal Code because Section 504 Indian Penal Code does not provide other requirements as discussed in the judgments cited by learned Advocate for the Petitioner.

4.2 It is further submitted that since the behavior or action on the part of the Petitioner cannot be treated as part of his duty and therefore, the learned JMFC has rightly not extended protection u/s 197 of the Code and issued process against him.

4.3 The learned Advocate Shri Vora has also cited the judgment of Bombay High Court reported in [G.P. Pedke Vs. Syed Javed Ali](#), which was referred to in the order passed by the learned JMFC.

5. I have considered the rival submissions, the averments made in the petition and other material on record as well as the order passed by the learned JMFC, Gandhinagar. On perusal of the complaint dated 28.1.2003, it appears that in Para 4 of the said complaint, the allegations are leveled against the present Petitioner/ accused No. 4 that Respondent No. 2 was called in police station and there, P.S.I. Shri A.B. Vatalia used abusive language and behaved with him as if Respondent No. 2 was an accused person who has committed some serious crime. Learned JMFC, Court No. 2, Gandhinagar has taken note of these allegations in its order and believed that the behavior of the Petitioner/ accused No. 4 is sufficient to constitute an offence as the ingredients of Section 504 of Indian Penal Code are satisfied and therefore, he has issued process against the present Petitioner/accused No. 4.

6. Therefore, now before arriving at any conclusion as to whether the learned JMFC has rightly issued the process qua the present Petitioner or has committed any error while doing so, firstly Section 504 of Indian Penal Code is required to be seen, which reads as under:

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.

7. Likewise the relevant abstract of the judgments cited by the learned Advocate for the Petitioner Mr. Hardik Dave are also required to be considered as the same are relevant for the purpose of deciding this case. In Jodh Singh (supra), the Court observed thus:

5. On a perusal of the above quote section, it is quite clear that provisions of Section 504, Indian Penal Code are attracted only when firstly, the accused insults the complainant; secondly, the insult must be of such a nature that it should be provocation to the complainant; and thirdly, that the accused intended or knew that the provocation was likely to cause the complainant to either break public peace or commit any other offence. If anyone of these three ingredients is missing the accused cannot be said to have committed an offence u/s 504, Indian Penal Code.

6. In a complaint u/s 504, Indian Penal Code the complainant must mention the actual words which were used by the accused while insulting him/her otherwise the court will not have enough material before it to come to a conclusion whether the words used by the accused amounted to intentional insult. Further more the complainant must give out in the complaint that the accused intended or knew that insulting words used by him were likely

to provoke the complainant in either to break the peace or to commit some other offence.

7. In the present case, the only allegation in the complaint is that when the complainant resisted the attempts by the accused to evict her forcibly from the land in her tenancy, the accused persons abused her in filthy words: The complainant has not give out the actual words in her complaint which were said to have been used by the accused. Not only has this had the complainant also not stated in her complaint that she was provoked by the insulting abuse. Where the complaint nowhere discloses that the insulting words used by the accused had provoked her or that the accused intended or knew that the provocation was likely to cause the complainant either to break the peace or commit any other offence, the trial court was not justified in summoning the accused for the offence u/s 504, Indian Penal Code. Under these circumstances, the order of the learned Magistrate summoning the applicants for the offence u/s 504, Indian Penal Code cannot be upheld.

7.1 In Prem Pal Singh (supra), it has been observed as under:

It may be remarked that the term abusive language" is very elastic and of wide amplitude and the words falling within the ambit of this term may not always amount to insult. On the basis of the mere allegation that the Petitioners used abusive language, no charge u/s 504 Indian Penal Code could be framed against the Petitioners. This charge thus also cannot be sustained.

7.2 In Amitabh Adhar (supra), the Court observed thus:

mere threat causing no alarm to complainant is not an offence u/s 506.

8. As discussed above, the complaint dated 28.1.2003 appears to be vague and no specific allegations are made which can show that the ingredient of Section 504 of Indian Penal Code are attracted qua accused No. 4 for issuance of process. In order to appreciate whether the language used by the Petitioner would amount to an insult of the type as would invoke provocation of the nature mentioned above, it was necessary to know that what were the abusive words alleged to have been used by the Petitioner. In the instant case, no such abusive words are mentioned or specified in the complaint. Therefore, it cannot be said that the language used by the Petitioner would amount to an insult of the type as would invoke provocation of the nature stated above.

9. The order passed below Ex. 1 in Criminal Case No. 1125 of 2003 by the learned JMFC, Court No. 2, Gandhinagar with regard to issuance of process qua accused No. 4 is also required to be appreciated keeping in mind the provisions contained in Section 197 of the Code, where prior sanction is necessary before prosecuting any public officer. The relevant part of Section 197 of the Code reads as follows:

197. Prosecution of Judges and public servants:

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction:

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.

10. According to learned JMFC, protection u/s 197 of the Code would not be available to the Petitioner as the behavior of the Petitioner cannot be treated as part of his duty. The learned Advocate for Respondent No. 2 has also tried to justify this view and submitted that the police officer are supposed to behave in a manner befitting to the post they hold and are supposed to maintain the dignity of the responsible public post. Any misuse of power by such officer would disentitle him to get protection u/s 197 of the Code. The learned Advocate for the Respondent has cited judgment of Bombay High Court reported in 1991 Criminal Law Journal P. 1481 in support of his arguments. It is submitted that the said judgment was also relied upon before the learned JMFC and it was made applicable in the present case.

11. The aforesaid submission cannot be accepted as the complainant has not specified in his complaint about the nature of abusive language used by the Petitioner. As discussed hereinabove, while applying ratio of various judgments referred by the learned Advocate for the Petitioner, vague averment regarding use of abusive words or language do not constitute offence u/s 504 of Indian Penal Code and therefore, in the opinion of this Court, the Petitioner is also entitled to have protection u/s 197 of the Code, otherwise, the object behind Section 197 of the Code would be defeated. The public officer while discharging his duty has to face situation where some vested interest or disgruntled elements with a view to cause harassment, file false complaint to achieve their ulterior motive. Therefore, the Law makers have taken due care and introduced this Section so as to provide adequate protection to the public servant. In light of aforesaid position, the learned Judge has also failed to appreciate the facts of the case in its true perspective and thereby failed to appreciate this very material aspect before issuing process against accused No. 4.

12. In this view of the matter, this Court is of the opinion that issuance of process qua accused No. 4 in Criminal Case No. 1125 of 2003 below Ex. 1 dated 28.1.2003 deserves to be quashed and set aside. The petition is allowed accordingly. The complaint as also process issued qua the Petitioner/accused No. 4 in Criminal Case No. 1125 of 2003 below Ex. 1 by order dated 28.1.2003 is quashed and set aside.

13. Rule is made absolute to the aforesaid extent.

Petition allowed.