

Dr. N.K. Mohanty vs Dr. Shambhuji on 27 February, 2017

IN THE COURT OF DR. RAKESH KUMAR: ASJ/SPECIAL
JUDGE(PC ACT) (CBI) SOUTH DISTRICT:
SAKET COURTS NEW DELHI

Criminal Revision No.: 52/16 & 8311/16

In the matter of:

1. Dr. N.K. Mohanty,
Son of G.C. Mohanty
R/o C-11/124, Moti Bagh,
New Delhi-110021.

2. R.S. Kharb,
Son of late M.S. Kharb,
R/o 12915, Hans Enclave,
Gurugram, Haryana. Revisionists

versus

Dr. Shambhuji,
S/o late O.P. Kulshreshtha,
R/o E-907, Saraswati Vihar,
New Delhi-110034. Respondent

Date of institution of Revision	:	05.07.2016
Date of reserving for order	:	23.02.2017
Date of order	:	27.02.2017

ORDER

1. This application under sections 397, 399 and 401 of the Code of Criminal Procedure, 1973 (Cr.P.C.), made by the applicants Dr. N.K. Mohanty and R.C. Kharb (hereinafter referred to as 'the accused persons') against respondent Dr. Shambhuji (hereinafter referred to as 'the complainant'), is directed against order dated 08.02.2016, passed by the court of Metropolitan Magistrate-1, South, Saket, New Delhi, whereby, in complaint case no. 85/01/12 entitled Dr. Shambhuji v. Surender Kumar and other unknown persons, the Learned Metropolitan Magistrate opined that there was sufficient ground for proceeding and issued summons for the attendance of the accused persons.

2. The circumstances giving rise to the application are that, on 12.10.2010, the complainant made a complaint under sections 499, 500, 504 and 506 read with section 34 of the Indian Penal Code, 1860 (I.P.C.) against the accused persons Surender Kumar and other unknown accomplishments of accused no.1 with the view to take cognizance of the offences and to summon, try and punish them for having committed the said offences. In the said complaint, the complainant, inter alia, stated that the complainant is working as Senior Chief Medical Officer in Safdarjung Hospital, New Delhi in the Department of Psychiatry and Administrative charge as CMO, Sanitation Cell; that the accused no.1 is an employee of the Safdarjung Hospital and is posted as Chief Sanitary Superintendent (Group C) in the Sanitation Cell of the hospital and has been working under the supervision and control of the complainant; that on 08.03.2010 the complainant (CMO Sanitation) and Additional M.S. (Sanitation) Dr. S.K. Das were holding a meeting of Sanitary Inspectors Mr. Rati Ram Meena, Mr. Pawan Kumar and Mr. Pankaj Kumar in the office chamber of the complainant in sanitation cell which started at 8:30 A.M.; that at about 8.50 A.M. the accused no.1 Mr. Surender Kuamr, CCS arrived in Deployment Cell; that the additional MS Dr. S.K. Das asked Mr. Pankaj Kumar, Sanitary Inspector to call the accused no.1 Mr. Surender Kumar to join the meeting; that at this the accused no.1 Mr. Surender Kumar became excited and without any provocation stated shouting abusive and derogatory words for Additional M.S. Dr. S.K. Das; that the accused no.1 shouted that Dr. S.K. Das is 'ullu ka paddha' and is 'Behan Chod'; that the accused no.1 threatened that he will throw Dr. S.K. Das physically out of the office room of the complainant (CMO sanitation); that the accused no.1 claimed to have a gangue of goondas in Sadarjung Hospital and outside and also threatened to physically harm Dr. S.K. Das; that the complainant found the above said behaviour of the accused no. 1 on 08.03.2010 absolutely intolerable and subversive of discipline and criminal; that the complainant lodged a written complaint dated 08.03.2010 with the MS Safdarjung Hospital recommending for disciplinary proceedings against accused no. 1 and also requested that matter be reported to police for further legal action; that the complainant also made reports and written complaints against accused no.1 to the disciplinary authority of accused No.1 and other competent authorities and consequent official memoranda were issued to the accused no.1; that as a result of above stated official actions of the complainant and consequent indictment of the accused by the higher authorities, the accused no.1 started nursing deep grudge, malice and animosity against the complainant; that the accused no.1 with an intention to take revenge from the complainant started threatening the complainant with the dire consequences; that the accused no.1 as a result concocted, fabricated and circulated false, malicious and defamatory stories against the complainant with a renewed vigour; that the accused no.1 and his other unknown accomplishments (accused persons) in Safdarjung Hospital and administration resorted to coercive methods in the form of willification campaign, intentionally defaming, intimidating, harassing and humiliating the complainant to punish the complainant for 'blowing whistle' against their corruption; that the accused no.1 Surender Kumar on 28.9.2010 at about 12.15 PM with prior planning and intention to defame the complainant went to the office newly appointed manager (Security) in the old MS office Safdarjung Hospital where RS Dagar, Manager (Security), Saitan Singh Dabas, Assistant Manager (Security), Sukhbir Singh, Assistant Manager (Security), Parvesh Kumar, Assistant Manager (House Keeping) and other visitors were also present, after talking about the general things for few minutes, told the above mentioned employees and others present very defamatory things about Dr. Shambhuji and also advised them to keep distance from him and not to allow him in their rooms; that many other employees including female employees also told the complainant that accused no.1

has been telling them the same incident and other defamatory stories about the complainant; that under the influence of defamation caused by the accused no.1 Surender Kumar, newly appointed Manager (House Keeping) RC Kharb told RS Dagar, Saitan Singh Dabas, Sukhbir Singh and Parvesh Kumar and even to other employees that they should not talk to the complainant or allow him in their office room in the Safdarjung Hospital otherwise RC Kharb will make complaints against the employees who kept any relation with the complainant; that the complainant has been socially isolated and ostracized due to false fabricated and malicious defamatory imputations caused by the accused no.1 and his accomplices; that the complainant has been greatly injured in his credit and reputation amongst colleagues, subordinates, friends and well wishers; that the complainant has been brought into public odium, ridicule and contempt and has suffered much pain and humiliation and thus, the accused persons have committed offences punishable under sections 499, 500, 504 and 506 read with section 34 of the Indian Penal Code, therefore, they be proceeded against. The prayer clause in the complaint reads as follows:

PRAYER It is therefore, most respectfully prayed that this hon'ble court may graciously be pleased to take this complaint on record, summon the accused persons, put them on trial and punish them in accordance with the law.

Any other relief/(s) this hon'ble court deem fit and proper.

3. The learned Magistrate on 28.07.2012, after considering the statements on oath of the complainant and of the witnesses, was of the opinion that there is sufficient ground for proceeding, and by order dated 28.07.2012, issued summons to the accused Surender for commission of offence punishable under section 500/34 IPC, also opined that no offence under section 506/34 IPC was made out. Vide order dated 28.07.2012, the learned Magistrate, inter alia, observed as follows:-

1. Vide this order I shall decide the following issue:

"Whether the accused namely Surender Kumar be summoned for commission of offences punishable u/s 500/506/34 IPC?"

xxx xxx xxx xxx
 xxx xxx xxx xxx

12. As prima facie all the ingredients have been established on record by the complainant, I find sufficient grounds to summon the accused for the offence punishable u/s 500/34 IPC.

13. However, there are no specific allegations of threat extended to the complainant though threats have been extended to the other witnesses who have not made any complaint to the court. Hence, no offence under section 506/34 IPC is made out.

4. Aggrieved by the said order dated 28.07.2012, the complainant made an application (first application) under section 397,398 and 399 Cr. P. C. The said application was decided on 16.08.2013, and the learned ASJ, inter alia, observed as follows :-

1. Vide order dated 28.07.2012, the Ld. Trial Court came to the conclusion that no offence under Section 506/34 IPC is made out in the complaint of Revisionist/complainant as no specific allegations of threat were extended by the accused to the complainant, though, threats were extended to other witnesses but they did not make any complaint to the court. By the same order, however, respondent No.1 Surender Kumar was summoned for the offence punishable under section 500/34 IPC.

2. Grievance of the revisionist/complainant is that the complaint filed by him before the Ld. Trial Court for commission of offence under Section 506/34 IPC by the respondent/accused, has been rejected only on the ground of non-competency of the revisionist to file such complaint, holding that no threats were extended to the complainant. It has been stated that the Ld. Trial Court clearly came to the conclusion that threats were extended to other witnesses but since they did not prefer to make any complaint to the court, the Ld. Trial Court, by the impugned order, refused to summon the respondent/accused, for the offence under Section 506/34 IPC.

xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx

11. Having regard to the clear position of law as enunciated by the Hon'ble Supreme Court, it is no more res-integra that a complaint having been filed by a non-victim is maintainable and cannot be thrown out only on the ground that it has not been filed by the victim. In this view of the matter, with this being the position of law, the impugned order refusing summoning because of non-competence of the revisionist to file a complaint under Section 506 IPC against the respondent, cannot stand judicial scrutiny. The Ld. Trial Court clearly erred in law in refusing to entertain the complaint of the Revisionist for offence u/s 506 IPC allegedly committed by the respondent qua a person, other than the complainant. As a result, the impugned order, in so far as it relates to non-summoning of accused for Section 506 IPC due to incompetency of the revisionist, cannot be sustained in law and is hereby set aside.

12. The matter is remitted to the Ld. Trial Court for proceedings further in the matter, treating the revisionist competent to file complaint under Section 506 IPC for threats (which were not extended to him but to some other witnesses), in accordance with law. It is made clear that this court has not expressed any opinion regarding the merits of the case and only the competence of the Revisionist has been decided.

5. On 15.01.2014, an application was made on behalf of the complainant for furnishing the addresses of remaining accused persons and the learned trial court issued summons to the accused persons Dr. D.K. Mohanty and Ramesh Chander kharab.

6. Vide order dated 22.04.2014, the learned trial court observed that summons had been served inadvertently against other two persons Dr. D.K. Mohanty and Ramesh Chander Kharab as no summoning orders have been passed by the court and discharged the accused persons.

7. Again, aggrieved by such order, the complainant made an application under sections 397, 398 and 399 Cr.P.C.

(second application) which was disposed off on 03.12.2014 and the learned ASJ, inter alia, observed as follows :-

13. Keeping in view the entire facts and circumstances of the case, Learned MM is directed to proceed with case in view of order dated 16.8.2013 passed by the Learned Sessions Court and to pass an appropriate order after giving an opportunity of hearing.

14. In view of above findings, the criminal revision petition is disposed of. It is made clear that Learned Trial court will proceed with the case in accordance with law without being influenced by any opinion/expression of this court on factual issues.

15. Copy of order be sent to Learned Trial Court. Complainant, accused Surender Kumar and Learned counsels are directed to appear before the Learned Trial court on next date of hearing fixed before the Trial court. TCR be sent back.

8. Thereafter, in compliance of orders passed by the learned ASJ on 16.08.2013 and 03.12.2014, the learned trial court heard the arguments on the point of summoning qua offence under section 506 IPC and vide order dated 08.02.2016, the learned trial court issued summons against the accused persons Dr. N.K. Mohanty and Ramesh Chander Kharab qua commission of offence punishable under section 506(1) IPC and the learned Trial Court observed as follows :-

"The case is listed for orders on the aspect of the summoning of Dr. N.K. Mohanty and Sh. Ramesh Chander Kharb. The aspect of summoning the said persons has arisen in view of order dated 16.08.2013 passed by Sh. Rajive Bansal, ASJ. The arguments on the said aspect were heard on 04.01.2016. During arguments the complainant had submitted that the testimonies of CW4 R.S. Dagar, CW5 Pravesh Kumar, CW6 S.S. Dabas and CW7 Shukhvinder Singh are sufficient for summoning of Dr. N.K. Mohanty and Sh. R.C. Kharb qua the commission of offence punishable u/s 506 (1) IPC of 1860.

I have perused the testimonies of CW4 R.S. Dagar, CW5 Pravesh Kumar, CW6 S.S. Dabas and CW7 Shukhvinder Singh. All the said witnesses have consistently deposed that they were intimidated by Dr. N.K. Mohanty and Sh. R.C. Kharb. Therefore, it is directed that Dr. N.K. Mohanty and Sh. R.C. Kharb be summoned as accused in this matter qua commission of offence punishable u/s 506 (1) IPC, 1860, reference is craved to para 10 of Bhushan Kumar v. State (NCT of Delhi), 2012 (5) SCC 424. The process shall be filed within one week. The summons shall be returnable on 29.03.2016."

9. I have heard counsel for the parties and have gone through the record of the complaint case no. 85/1/12 entitled Dr. Shambhuji v. Surender Kumar and other unknown persons, pending before the learned Magistrate.

10. Having drawn my attention on the contents of the application, the impugned order dated 28.10.2014 and the record of complaint case no. 85/1/12, pending before the learned Metropolitan Magistrate, it is submitted by counsel for the applicant that the impugned order suffers from illegality and has been passed without application of mind, therefore, the same be reversed. The learned counsel for the applicant further draws my attention on the impugned order and order dated 15.08.2013 of learned ASJ in revision application and submitted that scope of challenge in that revision petition was only for consideration under section 506 IPC against the accused Surender who was already summoned under section 500 IPC. It is further submitted that vide the impugned order the learned trial court considered summoning of other accused persons also for having been committed offence under section 506 IPC but, in the light of order in revision petition, while passing the impugned order, the learned MM could not have considered the names of other accused persons. It is further submitted that directions given by the revisional court were only qua Surender Kumar to consider if he could be summoned for the offence under section 506 IPC.

11. Per contra, the learned counsel for the respondent submitted that submission made on behalf of applicants are not sustainable as other persons were also impleaded in the complaint being unknown accomplishes. The learned counsel for the respondent has drawn my attention on the contents of the first revision application and submitted that in para no. 21, 22 and grounds I at page 27 of the application, the petitioner had also challenged the earlier impugned order qua the accused Dr. N.K. Mohanty. It is further submitted that the applicants have failed to show any law under which the revisional court can direct not to consider the evidence as a whole to summon other accused persons also. It is further submitted that the learned ASJ in first revision application only considered the question of locus standi and specifically observed that his expressions are not on the merits of the case. It is further submitted that after the passing of revisional order no further evidence were examined and the accused persons were summoned only on the basis of evidence already led which clearly establishes the role of the accused persons/applicants.

12. I have given my thoughtful consideration to the submissions made on behalf of the parties.

13. The first contention raised by the applicants that the applicants are not named and there are no specific allegations against them to sustain the summoning order is not sustainable, for the reasons,

that in the memo of parties in the complaint, the complainant has specifically named Surender Kumar as accused no.1 and other unknown accomplishments of the accused no.1 as the accused no.2. During the pre-summoning evidence, the names of the accused persons summoned later, by way of impugned order, were specifically stated by the witnesses. There are specific allegations in the complaint regarding threats extended by the accused no.1 that he would throw Dr. S.K. Das physically out of the office room and also physically harm him. It is in the evidence of the witnesses that R.C. Kharab threatened witnesses to spoil their services record and also to face dire consequences.

14. Further, the applicants were not summoned by the learned trial court vide original summoning order, is no ground to contend that they could not have been summoned by way of the impugned order. It is note-worthy here that while passing the first summoning order, the learned trial court had considered the question of summoning of the accused for having committed an offence under section 500 IPC only. The learned trial court had also observed that there were no specific allegations of threat extended to the complainant though threats have been extended to the other witnesses, who have not made any complaint to the court, hence, no offence under section 500/34 IPC was made out.

15. Furthermore, the learned revisional court in the first revision application had, vide order dated 15.08.2013, specifically held that the learned trial court clearly erred in law in refusing to entertain the complaint of revisionist for the offence under section 506 IPC allegedly committed by the respondent qua a person, other than the complainant. The learned court had, while setting aside the impugned order, in so far as it related to non-summoning of accused for section 506 IPC, due to incompetency of the revisionist, held that it could not be sustained in law. The learned court also remitted the matter to the learned trial court for proceeding further the matter, treating the revisionist, competent to file complaint under section 506 IPC for threats (which were not extended to him but to some other witnesses), in accordance with law.

16. From the order dated 15.08.2013 passed in the first revision application, it is quite clear that the learned revisional court remitted the matter to the learned trial court to consider the complaint for an offence under section 506 IPC also treating the complainant competent to file complaint although the threats were not extended to him but were extended to some other persons.

17. Again, there is no doubt that first summoning order was against the accused Surender Kumar only. The reason for summoning only accused Surender Kumar was quite obvious. The learned trial court had, while passing first summoning order dated 28.07.2012, opined that since no threats had been extended to the complainant, no offence under section 506/34 IPC was made out. I have already observed that said findings of the learned trial court have already been set aside. Even otherwise, while passing the first summoning order, the learned trial court had specifically observed that there were allegations of threats extended to other persons.

18. In the light of order of revisional court dated 15.08.2013, once the first summoning order, in so far as it related to non-summoning of accused for section 506 IPC, due to incompetency of the revisionist, has been set aside and it has been established that the complainant was competent to file

complaint under section 506 IPC qua the threats extended to some other persons, the learned trial court had to consider the complaint for the offence under section 506 IPC not only against the accused, who has already summoned, but also against the persons who are not summoned earlier, for there were evidence against those accused persons.

19. A perusal of impugned order clearly reveals that the learned trial court, from the testimonies of CW4 R.S. Dagar, CW5 Parvesh Kumar, CW6 S.S. Dabas and CW7 Sukhvinder Singh, was of the opinion that there were sufficient ground for proceeding, rightly issued summons to the accused persons.

20. The contention of the applicants that respondent had not even challenged the original summoning order dated 28.7.2012 on the grounds that the petitioners were not summoned and the scope of revision petition preferred by the respondent was only non-summoning of Surender Kumar under section 506 IPC, is totally false and misconceived and is not sustainable. In the first application under section 397, 398 and 199 Cr.P.C. filed by the complainant, it is stated (in para no.21, 22 and grounds I) as follows:-

21. There was sufficient prima facie material before learned MM against respondent No.1/accused No.1 and Dr. N.K. Mohanty of Safdarjung Hospital for intimidating the threatening the witnesses in this criminal complaint case with malicious intention and knowledge to interfere in the course of administration of justice.

22. That aggrieved and dissatisfied with the perverse and unlawful findings of the learned MM in para 13 of the impugned order refusing to summon the respondent No.1/accused no.1 u/s 504, 506 r/w 34 IPC and Mr. R.C. Kharb and Dr. N.K. Mohanty u/s 500, 504, 506 r/w 34 IPC; the petitioner begs to prefer this appeal amongst others.

GROUNDS

1. BECAUSE, Ld. MM has misdirected itself in law by not summoning the respondent No.1/accused No.1 under sections 504, 506 r/w S.34 IPC. The Ld. MM has further misdirected itself in law by not summoning the additional accused persons against whom there was sufficient prima facie material under Sections 500, 504, 506 r/w S 34 IPC. The learned MM erroneously held in para 13 of the impugned order dated 28.07.2012, quoted below for ready reference:-

21. In the light of the contents of first revision petition filed by complainant, it is quite clear that the complainant had also questioned the non summoning of other accused persons for having committed an offence under section 506 IPC.

22. The contention that there was no directions by the revisional court to consider the summoning order on the point of summoning the present applicants is also not sustainable in law. The directions issued by the learned revisional court were to

consider the commission of offence under section 506 IPC and the applicants could not contend that their names could not have been considered for summoning as accused persons.

23. In view of above discussion, I find no illegality and irregularity in the impugned order, dated 08.02.2016, passed by learned trial court. Said impugned order, dated 08.02.2016, passed by learned trial court is hereby upheld.

The application is without merit and, therefore, dismissed.

24. File be consigned to the Record Room. The record of the complaint case no. 49/1/11, called from the court of the learned Magistrate be sent back alongwith a copy of this order.

25. The parties are directed to appear before the learned trial court on 03.03.2017 at 2.00PM.

Pronounced in the open court (DR. RAKESH KUMAR) on 27 of February, 2017 th ASJ/Special Judge (PC Act) (CBI) South District, Saket Courts, New Delhi