

Vikram Johar vs The State Of Uttar Pradesh on 26 April, 2019

Equivalent citations: AIR 2019 SUPREME COURT 2109, 2019 (14) SCC 207, AIRONLINE 2019 SC 297, 2019 (4) ALJ 154, (2019) 2 CRILR(RAJ) 610, (2019) 200 ALLINDCAS 215, (2019) 2 ALD(CRL) 808, (2019) 2 ALLCRILR 939, (2019) 2 PAT LJR 388, (2019) 2 RECCRIR 961, (2019) 3 MAD LJ(CRI) 295, (2019) 4 CRIMES 410, (2019) 6 SCALE 794, (2019) 75 OCR 38, 2019 CALCRILR 4 42, 2019 CRILR(SC MAH GUJ) 610, AIR 2019 SC(CRI) 849

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Bench: K.M. Joseph, Ashok Bhushan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 759 of 2019
(arising out of SLP (Crl.) No.4820/2017)

VIKRAM JOHAR

...APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

...RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN,J.

Leave granted.

2. This appeal has been filed challenging the judgment of the Allahabad High Court dated 06.02.2017 by which judgment, the criminal revision filed by the appellant was dismissed. The criminal revision was filed by the appellant challenging the order dated 29.11.2016 passed by the Additional Chief Judicial Magistrate rejecting his discharge application moved under Section 239 read with Section 245 Cr.P.C. in a complaint case No.483 of 2013 under Section 504 and 506 of I.P.C.

3. The brief facts of the case, which need to be noted for deciding this appeal are:-

3.1 The respondent No.2 (hereinafter referred to as “complainant”), was a partner of M/s.

Ram Company engaged in business of wood processing and sale. The company had its premises at Kosikala, District Mathura, Uttar Pradesh.

3.2 On 18.12.2010 at 3.00 AM fire broke into the premises of M/s. Ram Company. Fire brigade and police were informed, which reached on the spot and fire could be controlled after several hours. The cause of fire was shown as electric short circuit in electric cable. Fire caused damages of stocks, plant and machinery and building. M/s. Ram Company had taken a Standard Fire & Special Perils Policy from M/s. United India Insurance Co. Ltd. M/s. Ram Company had submitted insurance claim on 20.12.2010. Total claim raised by the company was Rs.3,62,45,114/-. The United India Insurance Co. Ltd. (hereinafter referred to as “insurance company”) appointed the appellant M/s. Protocol Surveyor and Engineers Private Limited, who is a certified surveyor by Insurance Regulatory and Development Authority. The appellant being Director of M/s. Protocol Surveyor and Engineers Private Limited undertook survey of insurance claim of the company.

3.3 On 04.04.2011, the appellant visited the premises at Kosikala, District Mathura for the purposes of preparing a survey report. Joint Inspection note was prepared on 04.04.2011, for which various documents were asked from the company. After various correspondences, the appellant submitted a final survey report dated 23.09.2011. M/s. Ram Company wrote letter dated 15.07.2011 and 22.07.2011 to the surveyor, which was duly replied on 23.07.2011 by the surveyor. M/S. Ram Company has also written to insurance company, which was replied by insurance company on 08.08.2011 informing M/s. Ram Company that surveyors have been asked to submit their final report at the earliest.

3.4 On 11.09.2011, the M/s Ram company submitted a letter to insurance company requesting to make payment of policy amount of Rs. 285.60 Lacs. In the said letter, some complaints were also made against the surveyor. Again on 19.09.2011, a letter was sent by M/s. Ram Company to the insurance company, where allegations were made against the surveyor. The surveyor, i.e., the appellant submitted final report on 23.09.2011 with regard to claim of M/s. Ram Company, in detail noticing all aspects of the matter. In the Survey Report in the last paragraph, following was stated:-

“15) Underwriters Liability In view of the above, it stands established that

(a) The insured has mis represented their claim of building.

(b) The insured has mis represented their claim of Plant & Machinery.

(c) The insured had made declaration to inflate the quantity. false stock

(d) The insured had made declaration on the stock declaration. false value

This policy shall be voidable in the event of mis representation, mis description or non disclosure of any material particular.

If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof if any fraudulent means or devices are used by the insured or any one acting on his behalf to obtain any benefit under the policy or if the loss or damage be occasioned by the wilful act, or with the connivance of the insured, all benefits under this policy shall be forfeited.

It is clear that the insured's Mis representation & False declaration have breached both the above stated policy conditions.

In view of above, that the subject claim is not admissible under the captioned policy of insurance.

This report is being submitted without prejudice and is subject to the terms and conditions of the policy of insurance.

Signed Protocol Surveyors & Engineers Pvt. Ltd.” 3.5 On 14.11.2011, respondent No.2, i.e., complainant filed an application under Section 156(3) Cr.P.C. alleging offences under Sections 383, 384, 471, 504 and 506 I.P.C. In the complaint, allegation was made against the appellant that he alongwith two or three other unknown persons, one of whom was holding a revolver, came to the complainant's house on 02.10.2011 at 7.00 PM and abused him in filthy language and was about to assault him, When some neighbours arrived there, the appellant and two or three other unknown persons fled the spot on their vehicle. On the above application dated 14.11.2011, on the order of the Magistrate, first information report was lodged being F.I.R. No.367 of 2011 under Sections 383, 384, 471, 504 and 506 I.P.C. registered on 24.11.2011. Insurance company by letter dated 12.12.2011 repudiated the claim of M/s. Ram Company. Paragraph Nos. 3, 4 and 5 of the said letter are to the following effect:-

“3. That during the course of carrying out survey & assessment of this claim, the overall approach & conduct of the surveyor was found to be satisfactory.

4. That the said surveyors submitted a copy of their Final Survey report No.2010-DEC-131 dated 23 September, 2011 to this office on 27 September, 2011.

5. That after scrutiny of the submitted survey report and in consultation with the technical team of our Head Office, we have repudiated the said claim vide our letter ref.no. VKJ:RK:FC:2011: 235:11 dated 06.12.2011.” 3.6 I.O. conducted the investigation calling the appellant also and submitted a closure report. In the closure report, I.O. also had stated that as per the call details and location of Vikram Singh's mobile (appellant), there was no roaming of his mobile from 1st October to 4th October and his location was within the NCR area. After recording the statements of several persons, the I.O. submitted final form, closure report. Against the report, a protest petition was filed by the complainant before the Judicial Magistrate, who by order dated 18.05.2012 allowed the

protest petition and directed for further investigation in the Crime No. 448 of 2011. Further investigation was also conducted by another I.O., who again submitted a final report opining that no offence has been committed. Again, a protest petition was filed. The Judicial Magistrate by Order dated 21.12.2012 held that no further investigation is required and it shall be justified to try and dispose of the case as a complaint case. Complainant's statement under Section 200 Cr.P.C was recorded. Complainant also got recorded statement of PW1- Ganesh Sharma and PW2 – Roop Singh @ Munna.

3.7 The Magistrate by Order dated 07.02.2014 summoned the appellant under Sections 504 and 506 I.P.C. Against the order dated 07.02.2014 an application under Section 482 Cr.P.C. was filed by the appellant in the Allahabad High Court, which application was disposed of by the High Court by order dated 30.07.2014. High Court while disposing of the application under Section 482 Cr.P.C. observed that in case, if discharge application is moved by the applicant within 30 days, it is expected that the same shall be considered and decided by a reasoned and speaking order, and till disposal of the application on merit, no coercive action shall be taken against the appellant.

3.8 An application was filed by the applicant under Section 239 read with Section 245 Cr.P.C. before the Court of Judicial Magistrate praying that appellant be discharged. In the application under Sections 239 and 245, details of claim, various reports and consideration by insurance company was mentioned. Additional Chief Judicial Magistrate vide its order dated 29.11.2016 rejected the application for discharge against which Criminal Revision was filed in the High Court, which has been dismissed on 06.02.2017. Aggrieved, by above order, this appeal has been filed.

4. Learned counsel for the appellant in support of this appeal contends that complaint filed by the complainant was nothing but proceeding for harassment of the appellant. The appellant, who was surveyor having given adverse reports regarding the fire claim of the company, the complainant due to annoyance and to teach a lesson to the appellant has filed the complaint. It is submitted that incident is alleged of 02.10.2011 when appellant is claimed to be visited his house and threatened him whereas the complaint in the Court of Chief Judicial Magistrate was filed on 14.11.2011, i.e., about more than one month and 12 days, which itself indicate that whole story was concocted to harass the appellant. It is submitted that police after making thorough investigation twice have found no offence committed and has submitted the closure report. It is submitted that ingredients of offence under Sections 504 and 506 are not made out on the reading of the complaints and Chief Judicial Magistrate committed error in rejecting the discharge application. High Court also did not advert to the allegations of the complaint and failed to notice that ingredients of offence under Sections 504 and 506 are not made out.

5. Learned counsel appearing for the respondents have refuted the submissions of the appellant and submits that there was sufficient material before the Judicial Magistrate to issue process to summon the appellant and there was no ground for discharging the appellant from the offence. The allegations in the complaint makes out a case under Sections 504 and 506 and no error has been committed by learned Additional Chief Judicial Magistrate in rejecting the discharge application and the High Court in dismissing the criminal revision.

6. Learned counsel for the parties have also placed reliance on various judgments of this Court, which shall be referred to while considering the submissions in detail.

7. We have considered the submissions of the learned counsel for the parties and have perused the records.

8. The question to be considered and answered in this appeal is as to whether in the present case, appellant was entitled to be discharged from the offence under Sections 504 and 506 and whether Courts below committed error in rejecting the discharge application.

9. We have noticed the facts and sequence of events, which led to filing of the application under Section 156(3) Cr.P.C. by the complainant against the appellant. We, in the present case, are not concerned on the merits of the claim of the complainant regarding insurance claim of the complainant pertaining to fire incident dated 18.12.2010. Our consideration has to confine only to the question as to whether the appellant has made out a case for discharge under Sections 504 and 506 I.P.C.

10. From the facts noticed above, it is clear that appellant's role was only of a surveyor appointed by insurance company to survey and submit report on the fire insurance claim alleged by the complainant with regard to incident dated 18.12.2010, which took place in his factory premises at Kosikala, District Mathura.

11. The appellant is Director of M/s. Protocol Surveyor & Engineers Pvt. Ltd. at Sector-7, Noida, Uttar Pradesh. Appellant visited the premises at Kosikala and held joint inspection on 04.04.2011. Various correspondences were made by the complainant with the appellant as well as insurance company. In the letter dated 11.09.2011, which was addressed to insurance company, there was no allegation made against the appellant and for the first time in letter dated 19.09.2011 sent by M/s. Ram Company, allegation was made against the appellant that appellant has asked for money for the final survey report, which was submitted by the appellant on 23.09.2011, which was received by insurance company on 27.09.2011.

12. We have noticed above that in the final survey report recommendation has been made to repudiate the claim due to misrepresentation and false declaration made by the appellant, which is breach of policy condition. The incident alleged against the appellant is dated 02.10.2011, i.e., immediately after submission of final survey report. It was only after final survey report submitted by the appellant on 23.09.2011, which was received on 27.09.2011 that the appellant alleged the incident dated 02.10.2011, in which appellant has alleged to have threatened the complainant. It is to be noted that application under Section 156(3) of Cr.P.C. was filed for the first time on 14.11.2011, copies of which is brought as Annexure P-9. The allegation in the complaint against the appellant with regard to incident dated 02.10.2011 are as follows:-

“.....When the complainant did not entertain the accused Surveyor Vikaram Johar, he and 2-3 other unknown persons, one of whom was holding a revolver, whom the complainant can identify, came to the complainant's house on 2.10.2011 at

7.00 Pm and abused him in filthy language and about to assault him. When some neighbour arrived there, the Surveyor Vikaram Johar, he and 2-3 other unknown persons fled the spot on their vehicle. The people who had saved the complainant has seen the occurrence.”

13. Twice the I.O. have conducted the investigation and submitted a closure report, on which protest petition was filed. On the protest petition, ultimately, the Judicial Magistrate by Order dated 21.12.2012 decided to treat the case as a complaint case. The complainant as well as its witnesses appeared in the witness box and supported the incident dated 02.10.2011.

14. Before we proceed to further examine the facts of the present case, we may notice the ambit and scope of power of the Court at the time of considering the discharge application.

15. This Court in Union of India Vs. Prafulla Kumar Samal & Another, (1979) 3 SCC 4 had occasion to consider Section 227 Cr.P.C., which is Special Judge's power to pass order of discharge. After noticing Section 227 in paragraph No.7, this Court held following:-

“7. XXXXXXXXXXXX The words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

16. After considering the earlier cases of this Court, in paragraph No.10, following principles were noticed:-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

17. A Three-Judge Bench of this Court in *State of Orissa Vs. Debendra Nath Padhi*, (2005) 1 SCC 568, had occasion to consider discharge under Section 227, it was held by the court that Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial.

It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements.

18. Another judgment of this Court, which is to be referred is *Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others*, (2015) 6 SCC 287. This Court in the above case has noticed the potentiality of misuse of Section 156(3) to harass those, who are entrusted with various statutory functions. This Court, in fact, has made observations that application under Section 156(3) Cr.P.C. has to be supported by an affidavit so that person making allegation should take responsibility of what they have said in the complaint. In paragraph No.30, following has been held:-

“30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons.

That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.”

19. It is, thus, clear that while considering the discharge application, the Court is to exercise its judicial mind to determine whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not to hold the mini trial by marshalling the evidence.

20. After noticing the nature of jurisdiction to be exercised by the Court at the time of discharge, we now revert back to the facts of the present case, where taking an allegation of complaint as correct on the face of it, whether offences under Sections 504 and 506 is made out, is a question to be answered.

21. We need to notice Sections 503, 504 and 506 for appreciating the issues, which has come up for consideration, which are to the following effect:-

“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.

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

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.

506. Punishment for criminal intimidation.— 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;

If threat be to cause death or grievous hurt, etc.—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.”

22. Section 504 of I.P.C. came up for consideration before this Court in Fiona Shrikhande Vs. State of Maharashtra & Another, (2013) 14 SCC 44. In the said case, this Court had occasion to examine ingredients of Section 504, which need to be present before proceeding to try a case. The Court held that in the said case, the order issuing process was challenged by filing a criminal revision. This Court held that at the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused. In paragraph No.11, following principles have been laid down:-

“11. We are, in this case, concerned only with the question as to whether, on a reading of the complaint, a prima facie case has been made out or not to issue process by the Magistrate. The law as regards issuance of process in criminal cases is well settled. At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint. The Magistrate is not expected to embark upon a detailed discussion of the merits or demerits of the case, but only consider the inherent probabilities apparent on the statement made in the complaint. In Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736, this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all advert to any defence that the accused may have.”

23. In paragraph No.13 of the judgment, this Court has noticed the ingredients of Section 504, which are to the following effect:-

“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.”

24. In another judgment, i.e., *Manik Taneja and Another Vs. State of Karnataka and Another*, (2015) 7 SCC 423, this Court has again occasion to examine the ingredients of Sections 503 and 506. In the above case also, case was registered for the offence under Sections 353 and 506 I.P.C. After noticing Section 503, which defines criminal intimidation, this Court laid down following in paragraph Nos. 11 and 12:-

“11. XXXXXXXXXXXXXXXX A reading of the definition of “criminal intimidation” would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of “criminal intimidation”. The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC.”

25. In the above case, allegation was that appellant had abused the complainant. The Court held that the mere fact that the allegation that accused had abused the complainant does not satisfy the ingredients of Section 506.

26. Now, we revert back to the allegations in the complaint against the appellant. The allegation is that appellant with two or three other unknown persons, one of whom was holding a revolver, came to the complainant’s house and abused him in filthy language and attempted to assault him and when some neighbours arrived there the appellant and the other persons accompanying him fled the spot. The above allegation taking on its face value does not satisfy the ingredients of Sections 504 and 506 as has been enumerated by this Court in the above two judgments. 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 mere allegation that appellant came and abused the complainant does not satisfy the ingredients as laid down in paragraph No.13 of the judgment of this Court in *Fiona Shrikhande* (supra).

27. Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande (supra) has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edition with regard to proof of offence states following: -

“...The prosecution must prove:

(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;

(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 complaint does not satisfy all the ingredients as noticed above.

28. On the principles as enumerated by this Court in Fiona Shrikhande (supra) and Manik Taneja (supra), we are satisfied that ingredients of Sections 504 and 506 are not made out from the complaint filed by the complainant. When the complaint filed under Section 156(3) Cr.P.C., which has been treated as a complaint case, does not contain ingredients of Sections 504 and 506, we are of the view that Courts below committed error in rejecting the application of discharge filed by the appellant. In the facts of the present case, we are of the view that appellant was entitled to be discharged for the offence under Sections 504 and 506.

29. Thus, in result, the appeal is allowed. The judgment of the High Court dated 06.02.2017 as well as the order of Chief Judicial Magistrate dated 29.11.2016 are set aside and the appellant stands discharged from the offence under Sections 504 and

506.J. (ASHOK BHUSHAN)J. (K.M. JOSEPH) New Delhi, April 26, 2019.