

Shakuntala

**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL WRIT PETITION NO.26 OF 2024**

**1. DAYANAND NARVEKAR**

S/o late Shri. Ganesh Narvekar,  
67 years of age, business,  
R/o H. No. 2/E/3, Duler,  
Mapusa, Bardez, Goa 403507.

**2. OSWALD CORDEIRO**

S/o late Alfred Cordeiro,  
48 years of age, R/o H.No. 499,  
Calizor, Moira, Bardez, Goa 403507

**3. NIKHIL CHODANKAR**

Son of late Vaman Chodankar,  
45 years of age, R/o House No. 632,  
Attanfondem, Moira, Bardez, Goa 403507.

**4. SATISH GOVEKAR**

S/o Suresh Govekar, age 51 years,  
R/o House No. EK/141/1,  
Jaidev waddo, Nachinola,  
Bardez, Goa 403507

**5. SADANAND RAWOOL**

S/o late Sonu Rawool, age 53 years,  
R/o House no. 234, Raint Waddo,  
Moira, Bardez, Goa 403507.

**6. JAMES COELHO**

S/o Peter Coelho, age 56 years,  
R/o House No. 101, Acoi,  
Mapusa Goa. 403507

**7. LEONARD D'SOUZA**

Son of John D'Souza, age 55 years,  
R/o House No. 16, Camarcazan,  
Mapusa, Bardez, Goa 403507.

8. NICHOLAS DIAS  
S/o Anthony Dias, age 60 years,  
R/o. 92, Segundo Waddo,  
Corjuem, Bardez, Goa 403508.

9. DILIP ALDONKAR  
Son of late Yeshwant Aldonkar,  
age 60 years, R/o. H. No. 156,  
Quitla, Aldona, Bardez, Goa 403508.

10. RAMA SATELKAR  
S/o Shiva Satelkar, age 68 years,  
R/o House Mo. 415/3,  
Calizor Waddo, Moira,  
Bardez Goa 403507.

11. THOMAS LOBO  
Son of late Roque Lobo age 63 years,  
R/o House no. 49, Zoidar waddo,  
Nachinola, Bardez, Goa 403508.

12. MYRA CORREIA  
W/o Agnelo Correia, age 59 years,  
R/o House No. 595/2, Maina Waddo,  
Aldona, Bardez, Goa 403508.

....PETITIONERS

**Versus**

1. STATE,  
Through Police Inspector,  
Mapusa Police Station,  
Mapusa-Goa.

2. THE PUBLIC PROSECUTOR,  
High Court of Bombay at Goa,  
Porvorim-Goa.

3. MARYANNE D'SOUZA  
R/o H. No. 1043/4, Muddawado,  
Carona, Aldona, Bardez, Goa

....RESPONDENTS

Mr. C. A. Ferreira with Mr. Sujay Kamulkar and Mr. Nehal Govekar, Advocates for the Petitioners.

Mr. Nikhil Vaze, Additional Public Prosecutor for Respondent-State.

**CORAM: BHARAT P. DESHPANDE, J.**

**RESERVED ON: 23<sup>rd</sup> April, 2024**

**PRONOUNCED ON: 29<sup>th</sup> April, 2024**

**JUDGEMENT**

1. Rule. Rule is made returnable forthwith.
2. Heard the parties with consent for final disposal.
3. The Petitioner by preferring the present petition under Section 482 of Criminal Procedure Code (Cr.P.C.) together with Articles 226 and 227 of the Constitution of India, are basically challenging the Order passed by the learned Magistrate in issuing process against the Accused for the offences punishable under Sections 143, 147, 504, 506 r/w 149 of the Indian Penal Code (I.P.C.)
4. The Petitioners are also challenging the order passed by the learned Magistrate on an application filed under Section 258 of Cr.P.C. and the application filed for discharge. Similarly, Petitioners are also challenging the orders passed by the learned Sessions Court in Criminal Revision Application No.41/2023

dated 06.06.2023.

5. Heard Mr. C. A. Ferreira with Mr. Sujay Kamulkar and Mr. Nehal Govekar, Advocates for the Petitioners and Mr. Nikhil Vaze, Additional Public Prosecutor for the Respondents.

6. Mr. Ferreira, learned counsel for the Petitioners would submit that issuance of process by the Magistrate, itself, is without application of mind and without considering the material placed along with the charge sheet. He submits that perusal of the entire charge sheet would go to show that the ingredients of Section 143, 147, 504, 506 r/w 149 of IPC are not at all attracted. He submits that Petitioner No. 1 was contesting elections and the Complainant who was not present at the spot filed the complaint only on the basis of some information that cash is being distributed from the office of Petitioner No.1. Accordingly, the officials of Election Commission visited the said place and found no evidence of distribution of cash.

7. Mr. Ferreira would submit that the Complainant lodged a complaint claiming that Petitioners abused the supporters of the Complainant and intimidated them as well as threatened them with assault. Mr. Ferreira would submit that except the contention that there were abuses in filthy words, neither the Complaint nor the

witnesses disclosed specifically the alleged abuses, to attract ingredients of Section 504 of IPC. Similar is the case with alleged threats, whereby attracting the provisions of 506 of IPC.

**8.** Mr. Ferreira would submit that it was in election time and therefore, the supporters of Petitioner no. 1 had gathered near his office. Such gathering cannot be termed as unlawful assembly, unless, any overt act is conducted by such assembly. He submits that even a large mob present at the spot peacefully cannot be termed as unlawful assembly.

**9.** Mr. Ferreira would submit that first of all, the ingredients of the offences as alleged in the charge sheet are not at all made out. According to him, the learned Magistrate was duty-bound even under Section 204 of Cr.P.C. to apply his mind before issuing such process.

**10.** Mr. Ferreira submits that though an application filed by the Petitioners under Section 258 of Cr.P.C., was rejected it cannot be a ground for refusal to exercising powers under Section 251 of Cr.P.C. Besides, he would submit that it is the duty of the learned Magistrate, even in a summons triable case, to peruse the charge sheet and only after prima facie satisfaction, issue process. If the Magistrate is of the opinion that there is no ground to proceed, the

Magistrate is empowered to discharge the Accused by stopping the proceedings under Section 258 of Cr.P.C.

11. Mr. Ferreira would further submit that though the Petitioners filed an application under Section 258 of Cr.P.C., which was rejected by the Trial Court, the Petitioner cannot be forced to undergo a trial without there being any material against the Petitioners.

12. Mr. Ferreira, learned counsel appearing for the Petitioner placed reliance on the following decisions:- (i) *V.M. Sanghi Vs. Rammorath Gourishankar Tiwari*, 1988 LawSuit(Bom) 491; (ii) *Madhavrao Gajanan Deshpande Vs. State of Maharashtra*, 2003(4)MHLJ101; (iii) *Subramaniam Sethuraman Vs. State of Maharashtra and Another*, (20004) 13 SCC 324,(iv)*Bhushan Kumar and Another Vs. State (NCT of Delhi) and Another*, (2012)5 SCC 424, (v)*Nandjee Singh Vs. The State of Bihar & Anr.*, 2012 SCC OnLine Pat 1567, (vi)*Manik Taneja and Another Vs. State of Karnataka and Another*, (2015) 7 SCC 423; (vii) *Vikram Johar Vs. State of Uttar Pradesh and Another*, (2019) 14 SCC 207; (viii) *Ramesh Chandra Vaishya Vs. State of Uttar Pradesh and Anr.*, 2023 SCC OnLine SC 668; (ix) *Asim Shariff Vs. National Investigating Agency*, (2019) 7 SCC 148;

*(x)Mahmood Ali & ors. Vs. State of U.P. & Ors., 2023 LiveLaw (SC) 613, (xi) Sitaram and Others Vs. Emperor, AIR 1925 Nag 260.*

13. Mr. Vaze, learned Additional Public Prosecutor appearing for the State claimed that though petition under Section 482 of Cr.P.C could be filed challenging the issuance of process, this Court should not entertain it for the simple reason that the learned Magistrate while rejecting the application filed by the Petitioners clearly observed that there is material to explain the substance of accusation. He would submit that even the Sessions Court in the revision filed by the Petitioners, upheld the order passed by the learned Magistrate.

14. Mr. Vaze would submit that the statements of three witnesses clearly show the ingredients of Sections 143, 504, 506 of IPC and thus, the issuance of process cannot be faulted with. He would further submit that this matter being a summons triable case, the Magistrate was not required to pass a detailed and elaborate order, showing his satisfaction for issuance of process. He would further submit that the decisions relied upon by the Petitioners are all in respect of a warrant or a sessions triable matter which cannot be made applicable to a summons triable

case. He submits that once a process is issued the Magistrate is duty bound to explain the substance of accusation followed by trial.

**15.** Rival contentions fall for consideration.

**16.** A First Information Report was lodged on 02.03.2012 which was registered under Crime No.50/2012 for the offences punishable under Sections 143, 147, 504, 506 r/w 149 of I.P.C. The complaint was lodged by Mr. Glen Souza Ticlo on 01.03.2012. In the complaint it is alleged that on 01.03.2012, between 06:00 p.m. to 06:30 p.m., the Petitioner No.1 being a Congress Candidate was found openly distributing money at his residence at Aldona market and when this fact was brought to the notice of the concerned officers, who apparently leaked the information to the Petitioner No. 1, who immediately came on the person of his workers along with 40 goons. The Petitioner No.1 and the said 40 goons created a riotous situation and threatened the Complainant's workers specifically, Melwyn Fernandes, Thomas, Anil, Dilip and abused them with filthy language. The Petitioner No.1/Accused No.1 also abused the said workers and instructed his goons to get bats, hockey sticks and other weapons from their cars to assault Complainant's workers.



**17.** This complaint was registered under crime no. 50/2012 on 02.03.2012 by the Mapusa Police Station.

**18.** The Charge sheet shows that the scene of offence panchanama was conducted on 02.03.2012 which is a nil panchanama.

**19.** The investigating agency recorded statements of the witnesses, namely, Vasudev Naik, Pandurang Rane, Melwyn Fernandes, John Leo Tavares, Deelip Satardekar and Anil Mhamal.

**20.** A perusal of statements of witnesses and specifically of Vassudev Naik and Pandurang Rane are concerned would go to show that said Vassudev Naik was posted as Senior Executive Magistrate in view of assembly election for 10-Aldona Constituency. He stated that on 01.03.2012, when he was on duty with the Assistant Sub-Inspector Shri P.S. Rane and one Videographer namely, Mr. Malik, while parking in the area at around 18:15 hours, one Mr. Melwyn Fernandes who identified himself as the caller from his mobile number, informed him that some people have gathered in the premises of office of Petitioner No.1 who is a Congress Candidate of 10-Aldona Constituency and are distributing money of voters. On receipt of such information, Mr. Vasudev Naik along with Police officers rushed to the spot. On

reaching near the office of Petitioner No. 1, he noticed some crowd gathered on the road as well as in the office. However, from the moment they reached near the spot, video filming of the place was done under his instructions. They did not notice any money being distributed, however, some passer-bys were seen standing and watching them. They also noticed some public/party workers from Congress and Bhartiya Janata Party, arguing with each other on the spot. There was no any untoward incident noticed by him. On the arrival of the police the situation was brought under control and all persons gathered at the spot, disbursed.

**21.** The statement of Mr. Pandurang Rane, Police Sub- Inspector who was present along with Mr. Vasudev Naik, is on the similar line.

**22.** As rightly pointed out by Mr. Ferreira, the statements of witnesses by name Melwyn Fernandes, John Leo Tavares, Deelip Satardekar and Anil Mhamal are stereotyped. All these witnesses claimed that they are the supporters of BJP candidates for the Aldona Assembly Constituency and were present near the market at around 18:00 hrs. They noticed a gathering of public in the office of Petitioner No.1 who was contesting on a Congress ticket. They also noticed that Petitioner No.1 through his supporters was

distributing money to the voters. Accordingly, they called the Senior Executive Magistrate, Mr. Vasudev Naik over phone and informed him about distribution of money and asked him to come to the spot. Mr. Vasudev Naik came at the spot after sometime, however, by that time, Petitioner No.1 and his supporters had already distributed money to the voters and when Mr. Vasudev Naik came, no any person was found distributing money. However, the Petitioner No.1 along with his supporters abused Melwyn, John, Deelip and Anil in filthy words and threatened to assault them. The Petitioner No.1 instructed his supporters to get bats, hockey sticks and other weapons from the car to assault them. However, by that time the Mapusa Police came and diffused the situation.

**23.** Mr. Ferreira would submit that based on these statements of four persons, the Learned Magistrate could not have issued process for the simple reason that ingredients of sections mentioned in the charge sheet are not all made out for the purpose of issuance of process.

**24.** Chapter VIII deals with offences against public tranquillity. Section 141 of I.P.C deals with unlawful assembly. It provides that an assembly of five or more persons is designated as unlawful

assembly, if the common object of the persons composing that assembly is firstly to overview by criminal force or show of criminal force or any public servant in exercise of lawful power of such public servant. Secondly, to resist the execution of any law or any legal process, thirdly to commit any mischief or criminal trespass or other offence, fourthly by means of criminal force or show of criminal force to any person to take or obtain possession of any property or to deprive any person of the enjoyment of the right to way or use of water or other corporeal right of which he is in enjoyment or possession or to enforce any right or any supported right and fifthly, by means of criminal force or show of criminal force to compel any person to do, what he is not legally bound to do, or to omit to do what he is legally entitled to do. By explanation, it is provided that an assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

**25.** In the case of *Sitaram and others (supra)*, it was observed that the law does not declare mere assemblage of men, however, large as illegal. What is required is that in order to be illegal, it must be inspired by an illegal object as specified in Section 141 of IPC. Even if, a large concourse of men armed with sticks and bill

hooks, it could not be presumed that their object was necessarily, illegal, though, the fact that they were in large crowd and were armed, may rise some suspicion, but such suspicion could not be proof upon which the Accused could be convicted.

**26.** Admittedly, it was an election time and accordingly, the alleged incident took place in front of the house/office of Petitioner No.1 who was one of the candidate in the said elections. It is normal that during elections, the supporters, party workers and other persons are bound to gather in front of the office of the candidate. Thus, such gathering even of large number of persons cannot automatically become unlawful, unless, the object of such assembly is found to be the one mentioned in Section 141 of IPC.

**27.** Either the common object should be to use of criminal force or to commit any mischief or offence etc. In the complaint, it is clear that the Complainant was not present at the spot. However, what he has stated is only based on the information received by him from his party workers including Melwyn and others. The statement of Melwyn, John, Deelip and Anil only disclosed that Petitioner No.1 along with 40 others, threatened them to assault. Similarly, Petitioner No.1 instructed the supporters to get bats, hockey sticks, from the car to assault them, however, in the

meantime the Mapusa Police came to diffuse the situation.

**28.** Thus, the contention that the assembly was unlawful is not made out as no criminal force was used by such assembly. Only the statement that the Petitioner No. 1 threatened them with assault, was diffused on arrival of the Mapusa Police. The statement of these four witnesses are identical and stereotyped. There is no mention that either the Petitioner No.1 or his 40 supporters were actually having the weapons in their hands or such weapons were removed or brought from the car/vehicle.

**29.** Similarly, the offence under Section 504 of IPC deals with intentional insult with intent to provoke breach of peace. The ingredients for invoking such offence must be established even at the prima facie stage for the purpose of issuing process. It provides that the person must intentionally insult and thereby gave provocation to another person intending of knowing it to be likely that such provocation will cause him to break public peace.

**30.** Section 506 of I.P.C deals with punishment for criminal intimidation. Section 503 deals with criminal intimidation and provides that whoever threatened 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 is not legally bound to do commits criminal intimidation.

31. In the case of ***Vikram Johar Vs. State of Uttar Pradesh (Supra)*** the Apex Court dealing with the aspect of discharge, for the offences punishable under Section 504 and 506 IPC discussed various provisions and earlier decisions and then observed in paragraph nos. 21 to 26 as under:

*21. Section 504 came up for consideration before this Court in Fiona Shrikhande v. State of Maharashtra. In the said case, this Court had the occasion to examine ingredients of Section 504 IPC, 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 para 11, following principles have been laid down: (SCC pp. 48-49)*

*"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, 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."*

*22. In para 13 of the judgment, this Court has noticed the ingredients of Section 504 IPC, which are to the following effect: (Fiona Shrikhande case, SCC p. 49)*



*"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 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."*

*23. In another judgment i.e. Manik Taneja v. State of Karnataka, 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 IPC. After noticing Section 503, which defines criminal intimidation, this Court laid down the following in paras 11 and 12: (SCC pp. 427-28):-*

*"11. 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."*

*In the above case, allegation was that the 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 IPC.*

*24. Now, we revert back to the allegations in the complaint against the appellant. The allegation is that the 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 the appellant came and abused the complainant does not satisfy the ingredients as as laid down in para 13 of the judgment of this*

*Court in Fiona Shrikhande.*

*25. Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande 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 the ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edn. with regard to proof of offence states the 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 someone 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.*

*26. On the principles as enumerated by this Court in Fiona Shrikhande and Manik Taneja, 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) CrPC, which has been treated as a complaint case, does not contain ingredients of Sections 504 and 506, we are of the view that the 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 IPC.*

32. In the case of **Ramesh Chandra Vaishya(supra)**, the Apex Court recently discussed in detail as to whether any material is placed on record for issuing of process under Section 504 of IPC and placed reliance in the case of **Fiona Shrikhande Vs. State of Maharashtra, 2013, 14 SCC, 44.**

33. In the case of **Manik Taneja (Supra)**, the Apex Court again while dealing with the offences under Sections 503 and 506 of IPC, observed that 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 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. Such threat must be with an intention to cause alarm to the threatened person. Mere expression of any words, without any intention to cause alarm, would not be sufficient to bring in the application of this section. If no intention is culled out from the mere threat, section 503 and 504 of I.P.C cannot be made out.

**34.** In the case of *Madhavrao Gajanan Deshpande(supra)*, learned Single Judge of this Court while considering the provisions of Section 504 and 506 of I.P.C, observed in paragraph 4 and 5 which reads thus:-

*4. The provisions of section 504 indicate that the offender should intentionally insult the complainant and thereby should give provocation to any person, intending or knowing it to be likely that such provocation should cause him to break the public peace, or to commit any other offence. For the purpose of coming to a prima facie conclusion, whether offence has been made out or not, the abuses uttered or alleged to have been uttered should have been mentioned in the complaint or in the chargesheet. When those abuses are mentioned, it would give an idea to the Court whether by said abuses, the person to whom the abuses have been addressed would get provoked and to such an extent that thereby he would commit breach of peace, or commit any other offence. It is a matter of common*

*experience that in the society some abuses are being uttered without meaning anything thereby. What section 504 requires is that there has to be an intention to insult a person by uttering said abuses or bad words. Therefore, failure in quoting those abuses would lead to the conclusion that no offence has been prima facie made out.*

*5. Section 506(I) of Indian Penal Code provides punishment for criminal intimidation, which has been defined by section 503 of Indian Penal Code. For bringing home the offence which has been indicated by section 503 of Indian Penal Code, the allegations should indicate prima facie but specifically to the extent that the person against whom the prosecution has been initiated did an act with the intention of causing alarm to that person or that was sufficient enough to cause that person to do an act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, for avoiding the result of such threat. In the present case, the complainant does not make out a case, as indicated by provisions of section 503 of Indian Penal Code. Therefore, on this count also prosecution has failed to make out a case for the Court to take cognizance and to proceed with it.*

**35.** In the case of ***V.M. Sanghi (supra)***, the learned Single Judge of this Court observed that though the threat to affect another's

living may amount to criminal intimidation, mere threat is not sufficient to attract the charge of criminal intimidation. The threat should be given with intention to cause alarm to the person threatened. If the Complainant does not say that due to the threats, he was alarmed, the ingredients of Section 504 or 506 cannot be made out.

36. As far as, the abuses are concerned, admittedly, neither the Complainant nor the witnesses disclosed the specific words uttered by the Accused persons so as to consider it as abuses in filthy language.

37. In the society, there are some common words used while talking which may appear to be offending, however, if such words are uttered without intending to offend any particular person, it cannot be considered as abuses, so as to prove the ingredients of Section 504 of I.P.C.

38. In the case of ***Bhushan Kumar(supra)***, the Apex Court while discussing the powers under Section 204 Cr.P.C, observed that though a reasoned order is not required to be passed by the Magistrate before issuing process, however, the Magistrate must be satisfied as to whether there is sufficient ground for proceeding. Such satisfaction need not be as to whether there is sufficient



ground for conviction. At that stage, the Magistrate is also not required to evaluate whether evidence is adequate for supporting conviction. The only requirement is that the Magistrate must be satisfied about the sufficient ground for proceeding, without recording reasons to that effect.

**39.** In the present matter, issuance of process is challenged on the ground that the learned Magistrate failed to consider that there is no sufficient ground for proceeding.

**40.** As far as Section 143 of I.P.C is concerned as discussed earlier, only presence of a large number of people at a spot cannot termed as unlawful assembly, unless, the intention appears to commit an illegal act. In this matter, admittedly, it was election time and Petitioner No.1 was contesting the election and therefore, presence of his supporters is but natural. Such presence of supporters cannot be termed as illegal unless, any material is brought on record to show that such assembly developed intention or object to conduct any illegal act. The complaint or the statement of the witnesses nowhere supports such contention.

**41.** The Complainant was not present at the spot, however, he set the law in motion by filing complaint. The statement of only four persons are relevant which are found to be stereotyped.

**42.** As far as, the allegations of distribution of money is concerned, the same cannot be considered as an offence in the present proceedings. It was for the Election Commission's Office to look into it.

**43.** The witnesses claimed that after the Election Officer came at the spot and found that there was no distribution of money as alleged, the Petitioner No. 1 along with his 40 supporters, abused Mr. Melwyn and his friends with filthy words. All these witnesses failed to disclose the exact abuses uttered by the Petitioner No.1 and his 40 supporters. Thus, only mentioning about abuses in filthy language will not be inviting the ingredients of the particular offence.

**44.** The said four witnesses then claimed that they were threatened to assault. The Petitioner No.1 then instructed his supporters to get bats, hockey sticks and other weapons from the car to carry out assault, however, in the meantime Mapusa Police came at the spot and diffused the situation. Here also, the statements are too casual by saying that "threatened to assault". It is difficult to consider that the Petitioner No.1 and his 40 supporters would simultaneously give threats to assault. No statement of any Police Officer from Mapusa Police Station is

recorded to show that they visited the spot and diffused the situation.

45. It is further admitted that the Petitioner No. 1 was contesting on a Congress ticket, whereas, the Complainant and four witnesses were supporters of the rival party. It was during election time and thus, filing such complaints and allegations against each other is but natural. However, the matter in hand clearly goes to show that ingredients of the offending section are not found established so as to issue process and to proceed with the trial. Accordingly, the extraordinary power available in this Court, under section 482 of Cr.P.C could be well used in the present situation for the purpose of closing the proceedings as no purpose would be served in continuing with such matter. In this regard reliance could be placed in the case of *State of Haryana Vs. Bhajanlal, AIR 1992, SC 604*, and more specifically, the parameter no.1 and 2.

46. Accordingly, the order of issuance of process dated 05.01.2014 passed by the learned Magistrate in IPC case No. CC/05/S/2014/A is hereby quashed and set aside.

47. Rule is made absolute in above terms.

**BHARAT P. DESHPANDE, J.**