IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay.

CRR 1380 of 2014

Bidyut Kumar Ghosh
Vs.
Bipul Mallick

For the Petitioner : Mr. Saibal Mondal

For the Opposite Party : Mr. Sankar Banerjee

Heard On : 13.01.2023, 11.04.2023, 26.04.2023, 29.11.2023.

Judgment On :04.12.2023.

ANANYA BANDYOPADHYAY, J.:

1. The instant revisional application is filed by the petitioner praying for quashing the proceedings being Case No. C-26 of 2007, under Sections 500/504 of the Indian Penal Code, pending before the Court of the Learned Additional Chief Judicial Magistrate, Bongaon, North 24 Parganas and order dated 13.2.2014 passed by the Learned Additional Chief Judicial Magistrate, Bongaon in Case No. C-26 of 2007, rejecting thereby the prayer of the petitioner for discharge from the instant case.

2. The petitioner was appointed as a Sub Registrar on 7.6.1983. By Notification No. 1896-F.R. Kolkata 10.7.2003 he was confirmed as Sub Registrar by the order of the Hon'ble Governor, State of West Bengal. The petitioner subsequently was holding the same post at Helencha Sub Registry Office, Police Station – Bagda, North 24 Parganas. The petitioner retired from the service on 30.4.2013.

3. Case No. C-26 of 2007 had been initiated on the basis of a petition of complaint filed by the opposite party before the Court of the Learned Additional Chief Judicial Magistrate, Bongaon, inter alia, alleging commission of offences by the petitioner punishable under Sections 500/504 of the Indian Penal Code.

   It was alleged that on 28.2.2007 the opposite party along with the witness no. 1 and 2 had been to Helencha Sub Registry Office for registering a Lease Deed. At about 12:30 p.m. the present petitioner came to the office. The opposite party submitted a Market Valuation Form for registering a Lease Deed.

   The petitioner fixed the value for registering the Deed and also indicated that he wanted a bribe by writing something by the side of the Valuation Form. It was alleged that the petitioner used the term 70E in the Valuation Form which meant Rs. 500/-, 55D which meant Rs. 400/- and 30E which meant Rs. 500/- should have to be paid to him. It was alleged, whenever anyone went for registration of Deed, the petitioner used to take bribe by using such terms in the Valuation Form as mentioned above.

It was further alleged that as the opposite party refused to pay a bribe to the petitioner, be became furious and hurled abusive languages towards the opposite party. It was also alleged that the opposite party introduced himself as a lawyer but inspite of that, the petitioner asked him to leave the room. Finding no other alternative, the opposite party left the office.

It was alleged that while the opposite party was standing on the open road, the petitioner arrived and in the presence of many people abused the opposite party in filthy language and also threatened to teach a lesson to the lawyers and would see that the lawyers were not allowed to enter the Sub Registry Office. The petitioner also allegedly degraded the reputation of the lawyers by calling them “bad names”.

It is the contention of the complainant/opposite party that he being a lawyer, has felt insulted as he has been abused in front of his clients and others and his name and reputation has been degraded in the society.

It is the allegation of the opposite party that the petitioner has insulted him with a threat to put an end to his profession and there are witnesses to such incident.

Further at the time of the alleged incident, many staff of the office as well as persons known to the opposite party were present. It is further alleged that the petitioner intentionally to tarnish the reputation of the opposite party, had used abusive languages in front of the people.

4. The Learned Chief Judicial Magistrate, Bongaon upon receipt of the aforesaid petition of complaint by an order dated 8.3.2007 took cognizance of the offences disclosed therein. Thereafter upon examining the complainant/opposite party and the witness Ashoke Mallick under Section 200 of the Code of Criminal Procedure, the Learned Magistrate was pleased to find a prima facie case made out against the petitioner under Sections 500/504 of the Indian Penal Code and in such circumstances issued summons in the name of the petitioner.
5. The petitioner having learnt about the initiation of the instant case against him, surrendered himself before the Court of the Learned Additional Chief Judicial Magistrate, Bongaon on 15.3.2007 and was released on bail.
6. Subsequently the petitioner filed an application before the Court of the Learned Additional Chief Judicial Magistrate, Bongaon therein praying for discharge from the instant case.
7. The Learned Additional Chief Judicial Magistrate, Bongaon by his order dated 13.2.2014 rejected the prayer for discharge made on behalf of the petitioner.
8. Petitioner stated the following facts in his petition:
    a) Ashok Mallick, Kartick Mallick and Ujjal Mallick , all sons of Atul Mallick of Village and Post Office – Malida, Police Station – Bagda approached the office of the present petitioner through the opposite party herein for registration

of their land on 28.2.2007. After verification of the documents submitted by the said persons, the petitioner refused to register their documents as they had failed to produce their identity as citizens of India. When the petitioner refused to act on the basis of their Will, they became furious and threatened the petitioner with dire consequences.

b) The petitioner by Memo No. 111 dated 23.7.2010 informed the Officer-in-Charge, Bagda Police Station about the said incident.

c) After receiving the said complaint, Bagda Police Station Case No. 217 dated 24.4.2010 under Section 14 of the Foreigners Act was initiated against the said persons and investigation ensued. The said persons also surrendered before the Court. The said proceeding is still in progress and pending.

d) Ashok Mallick is one of the witness of the instant case. From his deposition it is clearly established that the complainant of the instant case approached the present petitioner for registration of the documents submitted by persons who are not citizens of India and when he refused to register the documents, the opposite party lodged the instant case against the present petitioner.

9. Petitioner submits that the instant proceeding was instituted by the opposite party on the basis of a false and frivolous story without any basis. The alleged incident took place on 28.2.2007 but the complaint was lodged on 8.3.2007 i.e. after 7 days from the date of alleged incident and no cogent reason has been attributed for such inordinate delay in lodging the complaint. From these facts it is crystal clear that when the petitioner refused to register the documents of the persons who are not citizens of India, they were motivated to harass the present petitioner and the instant case has been lodged. Initiation and continuation of the impugned proceeding is an abuse of the process of court and same is liable to be quashed.

10. Petitioner submits that in order to justify a charge under Section 500 of the Indian Penal Code, it is required that the allegations satisfy requirement of Section 499 of the Indian Penal Code as also the explanations appended thereto. It is thus required to be shown by an aggrieved person that the imputation, which has harmed his reputation, directly or indirectly, lowered his moral and intellectual character in the estimation of others. In the event the moral or intellectual character of the aggrieved person is not lowered in the estimation of other persons, making of the imputation cannot *per se* lead to commission of the offence of defamation. In the instant case, neither the petition of complaint nor the statement of the opposite party and his witness, recorded on solemn affirmation before the Learned Magistrate, allege that the reputation and/or moral or

intellectual character of the opposite party was lowered in the estimation of any other person and the opposite party had also failed to adduce any person, as witness on his behalf, in support of the fact that his moral or intellectual character has been lowered in the eyes of the said person. It is thus apparent that the opposite party has failed to make out a case within the parameters as provided under Section 499 of the Indian Penal Code and as such the charge of defamation as alleged against the petitioner is without any merit and the proceeding impugned is liable to be quashed.

11. Petitioner submits that in order to make out an offence of defamation, as made punishable under Section 500 of the Indian Penal Code, it is essential to show existence of *mens rea* on the part of the accused persons. In respect of the petitioner it cannot be alleged that there existed *mens rea* on the part of the said petitioner as the action of the petitioner in exercise of his natural right to take such necessary action for protection of his own interest and/or rights. Moreover, the petitioner being a public servant, has an authority to register or refuse to register a document submitted by the opposite party, if it is established that the persons who submitted the documents, are not citizens of India. The petition of complaint as well as the examination on solemn affirmation did not establish in any way the essential ingredients constituting an offence as provided under Section 500 of the Indian Penal Code. In the absence of *mens rea* on the part of the petitioners, the continuance of the impugned proceeding will be

clearly an abuse of the process of court and hence the same is liable to be quashed forthwith for the ends of justice.

12. Petitioner submits that to constitute an offence of criminal intimidation, the following essential ingredients are required to be proved even in prima facie.

a) A person threatens another with injury;

b) The injury is to – (i) his person, reputation or property, or (ii) to the person or reputation of anyone in whom that person is interested.

c) The intention is – (i) to cause harm to that person, or (ii) to cause that person to do any act which he is not legally bound to do, as means of avoiding, execution of such threats, or (iii) to cause that person to omit to do any act which that person is legally entitled to do, as the means of avoiding execution of such threat.

However, in the instant case, from the petition of complaint as well as examination on solemn affirmation jointly even if taken into consideration, the essential ingredients as stated hereinabove not in any way fulfilled. From Annexure 'P5' it is clearly established that the opposite party as an Advocate with the help of his client tried to provoke the present petitioner to act illegally. The clients of the opposite party who are not citizens of India tried to register the documents in their favour but as a Government Servant the petitioner refused to do so

and to malign the reputation of the petitioner with false and frivolous allegations, lodged the instant case. In such circumstances, the initiation and continuation of the impugned proceedings is a glaring example of the abuse of the process of court and as such, the same is liable to be quashed forthwith.

13. Petitioner submits that the instant case was instituted by the opposite party with a mala-fide intention to harass and humiliate the present petitioner. The opposite party tried to register a document of his clients who are not citizens of India. The petitioner as a Government Servant refused to register the said documents and when he refused to do so, the said persons committed an offence against a public servant. It is well established by the Hon'ble Apex Court that if any complaint lodged by a person with ulterior motive even if at the initial stage, the High Court by exercising jurisdiction under Section 482 of the Code of Criminal Procedure may quash the proceedings.

14. Petitioner submits that the initiation of the proceedings is bad in law. The petitioner was a Government Servant at the time of alleged incident. It is mandatory that before taking cognizance of the offences by the Learned Court, sanction should be taken from the authority as provided under Section 197 of the Code of Criminal Procedure. From the petition of complaint it is well established that the petitioner was a Sub Registrar of a concerned office, petitioner refused to register the documents as the persons who approached the petitioner for registration of documents, were not citizens of India. So the refusal to

register a document by the petitioner was an official act. However, in the instant case no sanction was granted by the authority for initiation of the prosecution against the petitioner. So the order of taking cognizance is bad in law and subsequent proceedings have no legs to stand upon and as such, the proceeding impugned is liable to be quashed.

15. Petitioner submits that the order dated 13.2.2014 the Learned Magistrate passed an order without applying his judicial mind. It is well settled principle of law that before initiation of any proceeding against a Government Servant, sanction for that prosecution, is mandatory. However, in the instant case, at the time of taking cognizance, no sanction was obtained from the authority, but the Learned Magistrate without applying his judicial mind mechanically rejected the petition of the petitioner which is bad in law and cannot be sustained. In such circumstances, the order impugned is liable to be set aside.

16. Petitioner submits that, Section 245(3) of the Code of Criminal Procedure (Amended by West Bengal Act No. 24 of 1988) provides that if the evidence relating to Section 44 is not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfies that upon the evidence already produced and for special reasons, there is ground for presuming that it shall not be in the interest of justice to discharge the accused. However, in the

instant case the petitioner appeared on 15.3.2007 before the Learned Court and was released on bail, but till date no evidence has been produced though 7 years had elapsed. So in these circumstances, the petition of complaint which gave rise to the instant proceeding is required to be set aside inasmuch as continuation of the proceedings is an abuse of the process of court.

17. Petitioner submits that it is well settled principle of law that Section 197 of the Code of Criminal Procedure provides for protection of responsible public servants against the institution of vexatious criminal proceeding for offence alleged to have been committed by them while they are acting or purportedly acting as public servants. However, in the instant case, the opposite party insisted the present petitioner to register a document of a person who is not a citizen of India and as a responsible Government Officer, the petitioner has refused to do so, as a result of which the instant case was instituted by the opposite party to harass and humiliate the present petitioner who was a Government Servant appointed by the order of the Hon'ble Governor, State of West Bengal. In such circumstances, the petitioner is entitled to get protection as provided under Section 197 of the Code of Criminal Procedure, but the Learned Magistrate at the time of taking cognizance, failed to take into consideration that without sanction from the concerned authority, a proceeding against a Government Servant cannot be instituted. As such, the initiation of

the proceeding suffers from illegality and subsequent proceeding thereto is also bad in law and liable to be quashed.

18. Learned Advocate for the petitioner submitted that –

i. The impugned proceeding is a gross abuse of the process of court which if allowed to continue for a single day more beyond the stage it has already reached, will degenerate itself into a weapon of harassment and persecution and as such the same is liable to be quashed forthwith for the ends of justice.

ii. The impugned order is a glaring example of the abuse of the process of court which if allowed to remain operative for a single day more will be violative of the principles of natural justice and as such the same is liable to be set aside forthwith for the ends of justice.

iii. The instant proceeding was instituted by the opposite party on the basis of a false and frivolous story without any basis. The alleged incident took place on 28.2.2007 but the complaint was lodged on 8.3.2007 i.e. after 7 days from the date of alleged incident and no cogent reason has been attributed for such inordinate delay in lodging the complaint. From these facts it is crystal clear that when the petitioner refused to register the documents of the persons who are not citizens of India, motivatedly and to harass the present petitioner, the instant case was lodged. As such

initiation and continuation of the impugned proceeding is an abuse of the process of court and same is liable to be quashed.

iv. In order to justify a charge under Section 500 of the Indian Penal Code, it is required that the allegations satisfy requirement of Section 499 of the Indian Penal Code as also the explanations appended thereto. It is thus required to be shown by an aggrieved person that the imputation, which has harmed his reputation, directly or indirectly, lowered his moral and intellectual character in the estimation of others. In the event the moral or intellectual character of the aggrieved person is not lowered in the estimation of other persons, making of the imputation cannot per se lead to commission of the offence of defamation. In the instant case, neither the petition of complaint nor the statement of the opposite party and his witness, recorded on solemn affirmation before the Learned Magistrate, allege that the reputation and/or moral or intellectual character of the opposite party was lowered in the estimation of any other person and opposite party had also failed to adduce any person, as witness on his behalf, in support of the fact that his moral or intellectual character has been lowered in the eyes of the said person. It is thus apparent that the opposite party has failed to make out a case within the parameters as

provided under Section 499 of the Indian Penal Code and as such the charge of defamation as alleged against the petitioner is without any merit and the proceeding impugned is liable to be quashed.

v. In order to make an offence of defamation, as made punishable under Section 500 of the Indian Penal Code, it is essential to show existence of *mens rea* on the part of the accused person. In respect of the petitioner it cannot be alleged that there existed *mens rea* on the part of the said petitioner as the action of the petitioner in exercise of his natural right to take such necessary action for protection of his own interest and/or rights. Moreover, the petitioner being a public servant, he has an authority to register or refuse to register a document submitted by the opposite party, if it is established that the persons who submitted the documents, are not citizens of India. From the petition of complaint as well as from the examination on solemn affirmation does not establish in any way the essential ingredients for constituting an offence as provided under Section 500 of the Indian Penal Code. In the absence of *mens rea* on the part of the petitioners, the continuance of the impugned proceeding would be clearly an abuse of the process of court and hence the same is liable to be quashed forthwith for the ends of justice.

vi. To constitute an offence of criminal intimidation, the following essential ingredients are required to be proved even in prima facie. (a) A person threatens another with injury; (b) The injury is to – (i) his person, reputation or property, or (ii) to the person or reputation of anyone in whom that person is interested. (c) The intention is (i) – to cause harm to that person, or (ii) to cause that person to do any act which he is not legally bound to do as means of avoiding, execution of such threats, or (iii) to cause that person to omit to do any act which that person is legally entitled to do, as the means of avoiding execution of such threat. However, in the instant case, from the petition of complaint as well as examination on solemn affirmation jointly even if taken into consideration, the essential ingredients as stated hereinabove not in any way fulfilled. It is clearly established that the opposite party as an Advocate with the help of his client tried to provoke the present petitioner to act illegally. The clients of the opposite party who are not citizens of Indian tried to register the documents in their favour but as a Government Servant the petitioner refused to do so and to malign the reputation of the petitioner with false and frivolous allegations, lodged the instant case. In such circumstances, the initiation and continuation of the impugned proceedings is a glaring

example of the abuse of the process of court and as such, the same is liable to be quashed forthwith.

vii. The instant case was instituted by the opposite party with a malafide intention to harass and humiliate the present petitioner. The opposite party tried to register a document of his clients who are not citizens of India. The petitioner as a Government Servant refused to register the said documents and when he refused to do so, the said persons committed an offence against a public servant. It is well established by the Hon'ble Apex Court that if any complaint by a person with ulterior motive even if at the initial stage, the High Court by exercising jurisdiction under Section 482 of the Code of Criminal Procedure may quash the proceedings.

viii. The initiation of the proceedings is bad in law. The petitioner was a Government Servant at the time of alleged incident. It is mandatory that before taking cognizance of the offence by the Learned Court, sanction should be taken from the authority as provided under Section 197 of the Code of Criminal Procedure. From the petition of complaint it is well established that the petitioner was a Sub Registrar of a concerned office, petitioner refused to register the documents as the persons who have approached the petitioner for registration of documents, are not citizens of India. So the refusal to register a document by the petitioner

was an official act. However, in the instant case no sanction was granted by the authority for initiation of the prosecution against the petitioner. So the order of taking cognizance is bad in law and subsequent proceedings have no legs to stand upon and as such, the proceeding impugned is liable to be quashed.

ix. Vide the order dated 13.2.2014, the Learned Magistrate passed an order without applying his judicial mind. It is well settled principle of law that before initiation of any proceeding against a Government Servant, sanction for that prosecution, is mandatory. However, in the instant case, at the time of taking cognizance, no sanction was obtained from the authority. The Learned Magistrate without applying his judicial mind mechanically rejected the petition of the petitioner which is bad in law and cannot be sustained. In such circumstances, the order impugned is liable to be set aside.

x. Section 245(3) of the Code of Criminal Procedure (Amended by West Bengal Act No. 24 of 1988) provide if all the evidence relating to Section 44 is not produced, in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfies that upon the evidence already produced and for special reasons, there is

ground for presuming that it shall not be in the interest of justice to discharge the accused. However, in the instant case the petitioner appeared on 15.3.2007 before the Learned Court and was released on bail, but till date no evidence has been produced though 7 years has elapsed. So in these circumstances, the petition of complaint which gave rise to the instant proceeding is required to be set aside inasmuch as continuation of the proceedings is an abuse of the process of court.

xi. It is well settled principle of law that Section 197 of the Code of Criminal Procedure provides for protection of responsible public servants against the institution of vexatious criminal proceeding for offence alleged to have been committed by them while they are acting or purportedly acting as public servants. However, in the instant case, the opposite party insisted the present petitioner to register a document of a person who is not a citizen of India and as a responsible Government Officer, the petitioner has refused to do so, as a result of which the instant case was instituted by the opposite party to harass and humiliate the present petitioner who was a Government Servant appointed by the order of the Hon'ble Governor, State of West Bengal. In such circumstances, the petitioner is entitled to get protection as provided under Section 197 of the Code of Criminal

Procedure, but the Learned Magistrate at the time of taking cognizance, failed to take into consideration that without sanction from the concerned authority, a proceedings against a Government Servant cannot be instituted. As such, the initiation of the proceeding suffers from illegality and subsequent proceeding thereto is also bad in law and liable to be quashed.

xii. It is expedient in the interest of justice to uphold the dignity of law that the impugned order is set aside.

xiii. The impugned order is otherwise bad in law and as such the same are liable to be set aside.

19. The Learned Advocate for the opposite party submitted that the petitioner was infuriated as the opposite party refused to pay the demanded amount of bribe he claimed to register the document. He instantly abused the opposite party demeaning his avocation causing injury to his reputation in public on the road. Since the incident took place on the road, the Learned Magistrate was justified in rejecting the prayer for discharge since the sanction under Section 197 of the Cr.P.C. was not required.

20. Indubitably the dispute arose between the parties in course of official activities, where the petitioner acted in official capacity. Statement with regard to the place of occurrence is contradictory in the version of the opposite party as delineated in the complaint and as recoded through examination on S.A. under Section 200 Cr.P.C. on

08.03.2007 when cognizance was taken by the Court of A.C.J.M., Bongaon.

21. In the complaint dated 08.03.2007 the opposite party mentioned to have been insulted and demeaned on the road. However, in his aforesaid statement before the Court during examination in compliance to the provisions of Section 200 of the Cr.P.C. narrated the incident to have initially occasioned in the official room of ADSR which subsequently transmitted on the road in the presence of public.

22. The statement of Ashok Mallick on S.A. on 08.03.2007 before the Court of A.C.J.M., Bongaon on examination under provisions of Section 200 Cr.P.C. mentioned the place of occurrence to be the Sub-Registry Office.

23. In the case of ***Mohammed Abdulla Khan Vs. Prakash K.***[1], the Hon'ble Supreme Court observed as follows:-

> *"10. Section 499 IPC defines the offence of defamation. It contains 10 exceptions and 4 explanations. The relevant portion reads;*
>
> > *Section 499. Defamation.— Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.*

[1] MANU/SC/1520/2017

11. An analysis of the above reveals that to constitute an offence of defamation it requires a person to make some imputation concerning any other person;

(i)Such imputation must be made either

(a) With intention, or

(b) Knowledge, or

(c) Having a reason to believe

that such an imputation will harm the reputation of the person against whom the imputation is made.

(ii) Imputation could be, by

(a) Words, either spoken or written, or

(b) By making signs, or

(c) Visible representations

(iii) Imputation could be either made or published.

The difference between making of an imputation and publishing the same is:

If 'X' tells 'Y' that 'Y' is a criminal – 'X' makes an imputation.

If 'X' tells 'Z' that 'Y' is a criminal – 'X' publishes the imputation.

The essence of publication in the context of Section 499 is the communication of defamatory imputation to persons other than the persons against whom the imputation is made."

24. In the case of ***Vikram Johar Vs. The State of Uttar Pradesh and Ors.***[2] the Hon'ble Supreme Court observed as follows:-

"15. This Court in ***Union of India Vs. Prafulla Kumar Samal & Anr,****MANU/SC/0414/1978: (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:-*

[2] MANU/SC/0608/2019

7. XXXXXXXXXX

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****, MANU/SC/1010/2004: (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 & Anr****,MANU/SC/0853/2013: (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 adverting 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 Anr, MANU/SC/0056/2015:*** *(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. Xxxxxxxxxxxx*
>
> *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."*

25. In the case of ***Fiona Shrikhande Vs. State of Maharashtra and Ors.***[3] the Hon'ble Supreme Court observed as follows:-

> *"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*

[3] MANU/SC/0853/2013

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.

14. We may also indicate that it is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504 IPC. It is not the law that a complainant should verbatim reproduce each word or words capable of provoking the other person to commit any other offence. The background facts, circumstances, the occasion, the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504 IPC"

26. In the case of ***Ramesh Chandra Vaishya Vs. The State of Uttar Pradesh and Ors[4].*** the Hon'ble Supreme Court observed as follows:-

> *"22. What remains is section 504, IPC. In Fiona Shrikhande and Anr. vs. State of Maharashtra, this Court had the occasion to hold that:*
>
> > *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.*
>
> *23. Based on the facts and circumstances of the case, we have little hesitation in holding that even though the*

[4] Manu/sc/0607/2023

appellant might have abused the complainant but such abuse by itself and without anything more does not warrant subjecting the appellant to face a trial, particularly in the clear absence of the ingredient of intentional insult of such a degree that it could provoke a person to break public peace or commit any other offence.

24. We record that the High Court misdirected itself in failing to appreciate the challenge to the criminal proceedings including the charge-sheet in the proper perspective and occasioned a grave failure of justice in rejecting such challenge.

25. For the reasons aforesaid, we unhesitatingly hold that it would be an abuse of the process of law to allow continuation of Criminal Case No.376 of 2016. While setting aside the impugned judgment and order of the High Court, we also quash Criminal Case No.376 of 2016."

27. In the case of ***Mohammad Wajid and Ors. Vs. State of U.P. and Ors.***[5] the Hon'ble Supreme Court observed as follows:-

"24. An offence under Section 503 has following essentials:-

1) Threatening a person with any injury;

i. to his person, reputation or property; or

ii. to the person, or reputation of any one in whom that person is interested.

2) The threat must be with intent;

i. to cause alarm to that person; or

ii. to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or

[5] Manu/sc/0846/2023

iii. to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

25. Section 504 of the IPC contemplates intentionally insulting a person and thereby provoking such person insulted to breach the peace or intentionally insulting a person knowing it to be likely that the person insulted may be provoked so as to cause a breach of the public peace or to commit any other offence. Mere abuse may not come within the purview of the section. But, the words of abuse in a particular case might amount to an intentional insult provoking the person insulted to commit a breach of the public peace or to commit any other offence. If abusive language is used intentionally and is of such a nature as would in the ordinary course of events lead the person insulted to break the peace or to commit an offence under the law, the case is not taken away from the purview of the Section merely because the insulted person did not actually break the peace or commit any offence having exercised self control or having been subjected to abject terror by the offender. In judging whether particular abusive language is attracted by Section 504, IPC, the court has to find out what, in the ordinary circumstances, would be the effect of the abusive language used and not what the complainant actually did as a result of his peculiar idiosyncrasy or cool temperament or sense of discipline. It is the ordinary general nature of the abusive language that is the test for considering whether the abusive language is an intentional insult likely to provoke the person insulted to commit a breach of the peace and not the particular conduct or temperament of the complainant.

26. Mere abuse, discourtesy, rudeness or insolence, may not amount to an intentional insult within the meaning of Section 504, IPC if it does not have the necessary element of being likely to incite the person insulted to commit a breach of the peace of an offence and the other element of the accused intending to provoke the person insulted to commit a breach of the peace or knowing that the person insulted is likely to commit a breach of the peace. Each case of abusive language shall have to be decided in the light of the facts and circumstances of that case and there cannot be a general proposition that no one commits an offence under Section 504, IPC if he merely uses abusive language against the complainant. In King Emperor v. Chunnibhai Dayabhai, (1902) 4 Bom LR 78, a Division Bench of the Bombay High Court pointed out that:-

To constitute an offence under Section 504, I.P.C. it is sufficient if the insult is of a kind calculated to cause the other party to lose his temper and say or do something violent. Public peace can be broken by angry words as well as deeds.

27. A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant.

28. In the facts and circumstances of the case and more particularly, considering the nature of the allegations levelled in the FIR, a prima facie case to constitute the offence punishable under Section 506 of the IPC may probably could be said to have been disclosed but not under Section 504 of the IPC. The allegations with respect to the offence

punishable under Section 504 of the IPC can also be looked at from a different perspective. In the FIR, all that the first informant has stated is that abusive language was used by the accused persons. What exactly was uttered in the form of abuses is not stated in the FIR. One of the essential elements, as discussed above, constituting an offence 16 under Section 504 of the IPC is that there should have been an act or conduct amounting to intentional insult. Where that act is the use of the abusive words, it is necessary to know what those words were in order to decide whether the use of those words amounted to intentional insult. In the absence of these words, it is not possible to decide whether the ingredient of intentional insult is present.

29. However, as observed earlier, the entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of Bhajan Lal (supra). The parameters are:-

> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support*

of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In our opinion, the present case falls within the parameters Nos. 1, 5 and 7 referred to above.

30. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the

FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the 17 necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

31. In State of Andhra Pradesh v. Golconda Linga Swamy, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:-

> *"5. …Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.*
>
> *6. In* ***R.P. Kapur v. State of Punjab****,MANU/SC/0086/1960: AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6) 38*

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an

accused to short-circuit a prosecution and bring about its sudden death…

DELAY IN LODGING THE FIR

32. The alleged incident is said to have occurred sometime in the year 2021. There is no reference to any date or time of the incident in the FIR. The allegations are too vague and general. Had it been the case of prompt registration of the FIR, probably the police might have been able to recover Rs. 2 Lakh from the possession of the accused persons alleged to have been forcibly taken away from the pocket of the first informant. The FIR also talks about a document on which the first informant and his brother were forced to put their signatures. We wonder, whether the investigating agency was in a position to collect or recover any such document from the accused persons containing their signatures in the course of the investigation, more particularly when the State says that the investigation is over and the charge sheet is also ready. In the absence of all this material, how is the State going to prove its case against the accused persons. The FIR in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The object of insisting upon lodging of the FIR to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as names of the eye witnesses present at the scene of occurrence.

33. In the aforesaid context, we may clarify that delay in the registration of the FIR, by itself, cannot be a ground for quashing of the FIR. However, delay with other attending circumstances emerging from the record of the case rendering the entire case put up by the prosecution inherently improbable, may at times become a good ground to quash the FIR and consequential proceedings. If the FIR, like the one in the case on hand, is lodged after a period of more than one year without disclosing the date and time of the alleged incident and further without any plausible and convincing explanation for such delay, then how is the accused expected to defend himself in the trial. It is altogether different to say that in a given case, in the course of investigation the investigating agency may be able to ascertain the date and time of the incident, etc. The recovery of few incriminating articles may also at times lend credence to the allegations levelled in the FIR. However, in the absence of all such materials merely on the basis of vague and general allegations levelled in the FIR, the accused cannot be put to trial.

34. The learned Additional Advocate General appearing for the State vehemently submitted that considering the gross criminal antecedents of the appellants before us, the criminal proceedings may not be quashed. The learned Additional Advocate General appearing for the State in her written submissions has furnished details in regard to the antecedents of the appellants. A bare look at the chart may give an impression that the appellants are history sheeters and hardened criminals. However, when it comes to

quashing of the FIR or criminal proceedings, the criminal antecedents of the accused cannot be the sole consideration to decline to quash the criminal proceedings. An accused has a legitimate right to say before the Court that howsoever bad his antecedents may be, still if the FIR fails to disclose commission of any offence or his case falls within one of the parameters as laid down by this Court in the case of Bhajan Lal (supra), then the Court should not decline to quash the criminal case only on the ground that the accused is a history sheeter. Initiation of prosecution has adverse and harsh consequences for the persons named as accused. In Directorate of Revenue and another v. Mohammed Nisar Holia, (2008) 2 SCC 370, this Court explicitly recognises the right to not to be disturbed without sufficient grounds as one of the underlying mandates of Article 21 of the Constitution. Thus, the requirement and need to balance the law enforcement power and protection of citizens from injustice and harassment must be maintained. It goes without 19 saying that the State owes a duty to ensure that no crime goes unpunished but at the same time it also owes a duty to ensure that none of its subjects are unnecessarily harassed.

35. In the overall view of the matter, we are convinced that the continuation of the criminal case arising from the FIR No. 224 of 2022 registered at Mirzapur Police Station, Saharanpur will be nothing but abuse of the process of the law. In the peculiar facts and circumstances of this case, we are inclined to accept the case put up on behalf of the appellants herein.

> *36. In the result, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court of Judicature at Allahabad is hereby set aside. The criminal proceedings arising from FIR No. 224 of 2022 dated 19.09.2022 registered at Police Station Mirzapur, Saharanpur, State of U.P. are hereby quashed."*

28. The observation of the Learned A.C.J.M., Bongaon cannot be sustained. The Sub-Registry Office had the presence of public, staff etc. as well the same were on the road. The dispute between the parties focused on the registration of a deed. It was not a private annoyance to have triggered discontentment between the parties. The act on the part of the petitioner to decline the registration a document as a Sub-Registrar is in official capacity contrary to a conflict of interest in individual private capacity. Evidently, the acrimony was generated in the office room of the ADSR in the precincts of the Sub-Registrar's office or building which eventually percolated on the road. The Sub-Registrar to have initiated a conundrum in his office room in his official capacity will not cease to exist or be transformed to any other status in the purview of a continuing offence on the road concerning self same cause of action. Therefore, the sanction under Section 197 of Cr.P.C. was required to be obtained since the petitioner acted in his official capacity.

29. The incident allegedly took place on 28.02.2007 and the complaint was lodged on 08.03.2007 after a delay of seven days which had not been explained in the complaint. Moreover, the statement of

imputation was generalized in nature rather than specific as transpired from the words used to have been abusively hurled to have lowered the reputation of the opposite party in public. The complaint did not mention any distinct name of a person who had been present at the time of imputation. Criminal law should not be set in motion or recoursed to achieve self-aggrandizement and glorification of one's ego.

30. It is absurd that the petitioner being a public servant will demand bribe in public at his own peril creating evidence to his detriment. The petitioner on affidavit has admitted his act of refusal to register the lease deed, which is permissible in his official capacity based on cogent ground concerning peculiarity of the registration process. Demand of bribe by the public servant should have been reported to the appropriate authority to initiate proceedings under the special branch of law pertaining to corruption at work place.

31. The opposite party surprisingly being aware of the legal process did not indulge in indicting the petitioner for a serious offence of corruption seeking bribe.

32. The element of 'mens rea' is not apparent in the complaint as denial of payment of bribe to the petitioner to have enraged or infuriated the petitioner will cause severe damage to the petitioner at the cost of his service than anything else. It cannot be premeditated or intentional to cause harm to the reputation of the opposite party.

33. The Hon'ble Apex Court in ***State of Haryana and Others v. Bhajan Lal and Others***[6] held as under :

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

[6] 1992 SCC (Cri) 426

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non–cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

34. In view of the above discussions, the proceedings if allowed to continue before the Trial Court will result in the process of abuse of law.

35. Accordingly, the impugned proceeding being Case No. C-26 of 2007, under Sections 500/504 of the Indian Penal Code, pending before the Court of the Learned Additional Chief Judicial Magistrate, Bongaon, North 24 Parganas and order dated 13.2.2014 passed by the Learned Additional Chief Judicial Magistrate, Bongaon in Case No. C-26 of 2007 are set aside.
36. The criminal revisional application being No. 1380 of 2014 is allowed.
37. Accordingly, CRR 1380 of 2014 stands disposed of. Connected application, if there be any, also stands disposed of.
38. There is no order as to cost.
39. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
40. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(**Ananya Bandyopadhyay, J.**)