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FIONA SHRIKHANDE

v.

STATE OF MAHARASHTRA AND ANOTHER
(Criminal Appeal No. 1231 of 2013)

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AUGUST 22, 2013

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

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s. 202 -Complaint - Order of Magistrate taking cognizance and issuing process against accused - Challenged - Held: Scope of enquiry u/s 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of allegations made in the complaint -- He is not expected to embark upon a detailed discussion of merits or demerits of the case, but only to consider inherent probabilities apparent on the statement made in the complaint -- Once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for higher courts to substitute its own discretion for that of the Magistrate -- In the instant case, the complaint discloses a prima facie case made out for initiating proceedings for the offence punishable u/s 504 IPC - Penal Code, 1860 - s.504.

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PENAL CODE, 1860:

s. 504 - Intentional insult with intent to provoke breach of peace - Ingredients - Explained.

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Respondent no. 2, filed a complaint case against her sister-in-law (accused-appellant) stating that the latter entered the Puja room and proceeded to drag the 'Devara' out in such a manner that all its frames were dislodged and idols of 'Kula Devatas' along with the lamp

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lit therein fell to the floor. It was stated that the accused did this with the deliberate intention of wounding the religious feelings of the complainant and her husband. The Additional Chief Metropolitan Magistrate found a prima facie case to take cognizance of offence punishable u/s 504 IPC against the appellants and issued process to her. The revisional court and the High Court declined to interfere.

Dismissing the appeal, the Court,

HELD: 1. At the complaint stage, the scope of enquiry u/s 202 Cr. P. C. 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. 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. 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. 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. [Para 11] [246-D-G]

Nagawwa v. Veeranna Shivalingappa Konjalgi and Others 1976 (0) Suppl. SCR 123 = (1976) 3 SCC 736, relied on.

2. The ingredients of s.504, IPC are: (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

A commit any other offence. 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 u/
B s 504 IPC. In the instant case, a reading of the complaint
discloses that a prima facie case has been made out for
initiating proceedings for the offence punishable u/s 504
IPC. [Para 13 and 15] [247-C-D, E-F; 248-B-C]

C Case Law Reference:

1976 (0) Suppl. SCR 123 relied on para 11

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1231 of 2013.

D From the Judgment and Order dated 12.10.2012 of the
High Court of Bombay in Criminal Writ Petition No. 2944 of
2012.

C.U. Singh, Siddhesh Bhole, Bhargava, V. Desai, Shreyas
E Mehrotra for the Appellant.

Uday U. Lalit, Farid F. Karachiwala for the Respondents.

The Judgment of the Court was delivered by

F **K.S. RADHAKRISHNAN, J.** 1. Leave granted.

2. We are, in this case, concerned with an incident which
happened in Flat No. 5, 2nd Floor, Goolestan, East Wing, Cuffe
Parade, Mumbai, which led to the filing of a complaint alleging
offences under Sections 294 and 504 IPC.

G 3. The Complainant (2nd respondent herein) is the sister-
in-law of the accused, being the wife of the complainant's
brother. Complainant and her brother are the sole surviving heirs
of their parents who are no more. Facts indicate that the father

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had the tenancy rights over the flat where the incident is alleged to have taken place. A

4. Complaint Case No. 4701623/SS/11 was filed before the Additional Chief Metropolitan Magistrate, 47th Court at Esplanade Mumbai alleging offences punishable under Sections 298 and 504 IPC. Complainant stated that she moved into the above mentioned flat on 23.04.2011 along with her husband, her servants and necessary household belongings. Having come to know of the same, her brother along with accused came to India from USA and occupied one out of the four bedrooms in the flat and then indulged in several unlawful acts with a view to push the complainant out of the flat. On 8.5.2011, the accused accompanied by her daughter (born to her from her first marriage) came to the flat at about 4.00 p.m. and then left for filing a complaint before the Cuffe Parade Police Station against the complainant stating that she had broken the locks of their rooms in the flat. After lodging the complaint, she came back to the flat and rushed into the room where the idols are kept and shouted that she would not permit anyone to enter the Puja room. The complainant has described the incident as follows: B
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"....As I and my husband were explaining to S.I. Pawar that she had no right whatsoever to deny or prevent our access to the Puja Room the Accused shouted that if I was so keen on doing Puja, she would move the Devara outside. She ran to the Devara and began to push it. Finding it a little heavy, she then ran in frenzy, picked up my clothes and that I had left on the bed, took them to the living room and threw them on the sofa. She then came back to the Puja Room and in a premeditated fashion made a second attempt to push the Devara out of the room. She proceeded to drag the Devara in a rough manner thereby dislodging all the frames and idols of our Kula Devatas making them fall to the floor. The lamp that I had lit also fell to the ground and the flame was extinguished. She did F
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A this with the deliberate intention of wounding the religious feelings of me and my husband knowing fully well that it would not only wound our religious feelings but will cause us a lot of hurt and anguish at this sacrilege at her hands.
 B At this point of time, even S.I. Pawar tried to reason with her not to indulge in such a sacrilegious act. Even then, the Accused ignored the pleas of her own daughter and of S.I. Pawar to stop indulging in such sacrilege to our Gods, and intentional insult to me and my husband.
 C Thereafter, Marisha shouted at the Accused and asked her to stop indulging in such acts."

(emphasis supplied)

D 5. On the basis of the above allegations, the complainant preferred a complaint on 18.5.2011, which was registered as Complaint Case No. 4701623/SS/11. Learned Additional Chief Magistrate, after perusal of the complaint, found a prima facie case to take cognizance under Section 504 IPC against the accused and, consequently, issued process to the accused vide his order dated 23.8.2011.

E 6. The appellant then preferred Criminal Revision Application No. 1124 of 2011 challenging the order issuing the process for offence punishable under Section 504 IPC. It was contented that the allegation that she had indulged in any action with an intention to provoke the complainant to break breach of public peace or commit any other offence, was totally unfounded. Further, it was also pointed out that no details had been furnished in that complaint to show in what manner the appellant had attempted to provoke the complainant, so as to attract Section 504 IPC. Further, it was pointed out that the complaint ought to have disclosed the actual words if, at all, used by the appellant, which would have provoked her to commit any other offence. It was also pointed out that the learned Magistrate has not properly understood the scope of Section 202 Cr.P.C. in issuing the process to the appellant.

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7. The Revision Application was resisted to by the complainant and, referring to various statements made in the complaint, it was submitted that the ingredients of Section 504 IPC have been fully satisfied. Further, it was also pointed out that it is not necessary that the complaint should verbatim reproduce the words spoken by the appellant and that once the complaint makes out a prima facie case for issuing the process and the Court is satisfied of the same, the Court has got the power to issue the process under Section 202 Cr.P.C.

8. Learned Additional Sessions Judge, after examining the rival contentions, found no merits in the application and dismissed the same vide his order dated 27.7.2012. Aggrieved by the same, the accused preferred Criminal Writ Petition No. 2944 of 2012 for quashing the proceedings initiated under Section 504 IPC before the High Court. Learned single Judge of the High Court, after perusing the rival contentions, also found no merits in the said petition and dismissed the same, against which this appeal has been preferred.

9. Shri C.U. Singh, learned senior counsel appearing for the appellant, submitted that the learned Magistrate has committed an error in taking cognizance of an offence under Section 504 IPC, in the absence of any material specifying the insulting words actually used by the accused, which would have provoked the complainant to commit any other offence. Learned senior counsel submitted that the learned Magistrate ought not to have taken the cognizance and issued the process on a complaint which is nothing but verbatim reproduction of the language of Section 504 IPC, without any particulars.

10. Mr. Uday U. Lalit, learned senior counsel appearing for the respondents, on the other hand, contended that the complaint discloses sufficient materials leading to the offence under Section 504 IPC and the learned Magistrate has correctly taken cognizance of the same and issued the process and the Sessions Judge as well as the High Court has rightly rejected the prayer for quashing the proceedings initiated under Section

A 504 IPC. Learned senior counsel submitted that if the averments in the complaint *prima facie* make out a case, the Magistrate can always taken cognizance of the same and it is not necessary that the complaint should verbatim reproduce all the ingredients of the offence nor is it necessary that the complaint should state in so many words that the intention of the accused was fraudulent.

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. 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 and Others* (1976) 3 SCC 736, this Court held that once the Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for the Higher Courts to substitute its own discretion for that of the Magistrate. The Magistrate has to decide the question purely from the point of view of the complaint, without at all advert to any defence that the accused may have.

12. Having noticed the scope of Section 202 Cr.P.C., let us examine whether the ingredients of Section 504 IPC have been made out for the Magistrate to initiate proceedings. Section 504 is extracted for easy reference:

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"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."

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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.

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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

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A 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.

B 15. We have already extracted the relevant portions of the complaint. If they are so read in the above legal settings, in our view, a *prima facie* case has been made out for initiating proceedings for the offence alleged under Section 504 IPC.

C 16. In such circumstances, we find no reason to take a different view from that of the High Court. The appeal is accordingly dismissed, without expressing any opinion on the merits of the case.

D R.P. Appeal dismissed.