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MANIK TANEJA & ANR.

v.

STATE OF KARNATAKA & ANR.
(Criminal Appeal No. 141 of 2015)

JANUARY 20, 2015.

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[V. GOPALA GOWDA AND R. BANUMATHI, JJ.]

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Code of Criminal Procedure, 1973 – s.482 – Quashing of criminal proceedings – Permissibility – Comments posed on Traffic Police Facebook page by the appellant against respondent-Police Inspector alleging harassment – FIR by the Inspector against the appellants u/ss 353 and 506 IPC – Petition for quashing FIR – Dismissed by High Court as premature – On appeal, held: The FIR was liable to be

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quashed as it does not disclose the alleged commission of offence – Continuance of the prosecution would amount to abuse of process of the Court – Penal Code, 1860 – ss.353 and 506.

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Allowing the appeal, the Court

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HELD: 1. When a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made, *prima facie*, establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue. Where, in the opinion of the Court, the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may quash the proceeding even though it may be at a preliminary stage. [para 9] [160-G-H; 161-A-B]

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MANIK TANEJA & ANR. v. STATE OF KARNATAKA & 157
ANR.

State of T.N. v. Thirukkural Perumal 1995 (1) SCR 712 = A
(1995) 2 SCC 449 – relied on

2. The essential ingredients of the offence under Section 353 IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. In the present case, there is absolutely nothing on record to show that the appellants either assaulted the respondents or used criminal force to prevent the second respondent from discharging his official duty. Thus, the ingredients of the offence under Section 353 IPC are not made out. [para 12] [162-B-C-D] B C

3. The act of the appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in Section 503 IPC. 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 minds of the second respondent causing obstruction in discharge of his duty. [para 15] [163-E, B-D] D E F G

4. In exercise of its jurisdiction under Section 482 Cr.P.C., the court should be extremely cautious to H

A interfere with the investigation or trial of a criminal case and should not stall the investigation, save except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of offence and that
B to abuse of process of the court. In the facts and circumstances of the case, it would be unjust to allow the process of the court to be continued against the appellants and consequently the order of the High Court is liable to be set aside. [para 16] [163-F-G; 164-B]

C Case Law Reference :

1995 (1) SCR 712 relied on para 9

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
D No. 141 of 2015.

From the Judgment and Order dated 24.04.2014 of the High Court of Karnataka at Bangalore in Criminal Petition No. 252 of 2014.

E Bharadwaj S. Iyengar, Vikas Upadhyay for the Appellants.

Joseph Aristotle, Priya Aristotle, M. B. Elakkumaran for the Respondents.

The Judgment of the Court was delivered by

F R. BANUMATHI, J. 1. Leave granted.

2. This appeal by Special Leave arises out of the judgment dated 24.04.2014 passed by the Karnataka High Court in Criminal Petition No.252 of 2014, in and by which, the High
G Court, while dismissing the petition, held that the petition is premature and the same is filed even before the completion of the investigation.

3. Brief facts which led to the filing of this appeal are as
H under:- The appellant No.1 and his wife Sakshi Jawa met with

an accident with an auto rickshaw on 13.06.2013 at about 10.30 in the morning, while Sakshi Jawa was driving Maruti SX4 KA-03-MM-8646. One of the passengers, who was travelling by the auto, namely Mrs. Laxmi Ganapati, sustained injuries and she was duly admitted in the Santosh Hospital for treatment. Sakshi Jawa, the appellant No.2, is said to have paid all the hospital expenses of the injured and the matter is said to have been amicably settled between the injured and the appellants and no FIR was lodged. The Constable, who was present at the time of incident, directed the appellants to meet Mr. Kasim, Police Inspector, Pulakeshi Nagar Traffic Police Station, Bangalore City. The appellants allege that as soon as they entered the office of Mr. Kasim, he behaved in a rude manner. Further, Mr. Kasim summoned the appellant No.2 to produce her driving licence and other documents. As at that time no FIR was lodged, the appellant No. 2 questioned the Police Inspector as to why she was being asked to produce those documents. Mr. Kasim, in reply, is alleged to have threatened appellant No.2 by saying that he would drag her to court if she continued to argue and she was also thrown out of his office. On the orders of Mr. Kasim, his deputy told the appellants that they are booking them on the charge of rash and negligent driving.

4. Being aggrieved with the manner with which they were treated, the appellants posted comments on the Bangalore Traffic Police Facebook page, accusing Mr. Kasim of his misbehaviour and also forwarded an *email* complaining about the harassment meted out to them at the hands of the Respondent Police Inspector. The Respondent No.2-Police Inspector filed a complaint regarding the posting of the comment on the Facebook by the appellants and subsequently FIR was registered against the appellants for offences punishable under Sections 353 and 506 IPC on 14.06.2013.

5. The appellants filed Criminal Petition No. 252 of 2014 under Section 482 Cr.P.C. before the High Court seeking to

A quash the FIR and the criminal proceedings initiated against them on the ground that the complaint is an afterthought. The High court *vide* its Order dated 24.04.2014 dismissed the petition stating that the petition was filed at a premature stage. The appellants by this special leave are seeking to assail the correctness of the above Order.

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6. Learned Counsel for the appellants contended that posting of a comment on the Facebook page of the traffic police does not amount to an offence under Sections 353 and 506 IPC and the FIR was not sustainable in law. It was submitted that Facebook page of the Bengaluru traffic police itself is a public forum meant for citizens to discuss and post their grievances and therefore, the comment of the appellants posted on the Facebook would not *prima facie* constitute the offence and the High Court erred in not appreciating the matter in proper perspective.

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7. Per Contra, learned counsel for the Respondents contended that by posting a comment on the Facebook of the traffic police, the appellants obstructed the public duty of the complainant and his staff by publicly making baseless allegations. It was submitted that such posting of derogatory comments on the Facebook page amounts to 'threatening' and 'criminal intimidation' within the meaning of Section 506 IPC affecting the complainant's reputation and integrity and the High Court rightly declined to quash the FIR and the impugned order warrants no interference.

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8. We have considered the rival contentions and perused the impugned order and materials on record.

9. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made, *prima facie*, establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is

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MANIK TANEJA & ANR. v. STATE OF KARNATAKA & 161
ANR. [R. BANUMATHI, J.]

expedient and in the interest of justice to permit the prosecution to continue. Where, in the opinion of the Court, the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may quash the proceeding even though it may be at a preliminary stage.

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10. In *State of T.N. v. Thirukkural Perumal* [(1995) 2 SCC 449] considering the scope of Section 482 Cr. P.C. to quash the FIR/criminal proceedings, this Court has held as under:-

“...The power of quashing an FIR and criminal proceeding should be exercised sparingly by the courts. Indeed, the High Court has the extraordinary or inherent power to reach out injustice and quash the first information report and criminal proceedings, keeping in view the guidelines laid down by this Court in various judgments (reference in this connection may be made with advantage to *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335] but the same has to be done with circumspection. The normal process of the criminal trial cannot be cut short in a rather casual manner....”

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11. So far as the issue regarding the registration of FIR under Section 353 IPC is concerned, it has to be seen whether by posting a comment on the Facebook of the traffic police, the conviction under that Section could be maintainable. Before considering the materials on record, we may usefully refer to Section 353 IPC which reads as follows:-

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“353. Assault or criminal force to deter public servant from discharge of his duty.- Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be

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A punished with imprisonment of either description for a term
which may extend to two years, or with fine, or with both."

12. A reading of the above provision shows that the
essential ingredients of the offence under Section 353 IPC are
B that the person accused of the offence should have assaulted
the public servant or used criminal force with the intention to
prevent or deter the public servant from discharging his duty
as such public servant. By perusing the materials available on
record, it appears that no force was used by the appellants to
commit such an offence. There is absolutely nothing on record
C to show that the appellants either assaulted the respondents
or used criminal force to prevent the second respondent from
discharging his official duty. Taking the uncontroverted
allegations, in our view, that the ingredients of the offence under
Section 353 IPC are not made out.

D 13. Section 506 IPC prescribes punishment for the offence
of criminal intimidation. "Criminal intimidation" as defined in
Section 503 IPC is as under:-

E "**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
F 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
G interested, is within this section."

14. 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,
H or property of the person threatened, or to the person in whom

MANIK TANEJA & ANR. v. STATE OF KARNATAKA & 163
ANR. [R. BANUMATHI, J.]

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. A

15. 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 minds of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on the Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in Section 503 IPC. B
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16. Of course, in exercise of its jurisdiction under Section 482 Cr.P.C., the court should be extremely cautious to interfere with the investigation or trial of a criminal case and should not stall the investigation, save except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of offence and that continuance of the criminal prosecution would amount to abuse of process of the court. As noted earlier, the page created by the traffic police on the Facebook was a forum for the public to put forth their grievances. In our considered view, the appellants might have posted the comment online under the *bona fide* belief that it was within the F
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- A permissible limits. As discussed earlier, even going by the uncontroverted allegations in the FIR, in our view, none of the ingredients of the alleged offences are satisfied. We are of the view that in the facts and circumstances of the case, it would be unjust to allow the process of the court to be continued against the appellants and consequently the order of the High Court is liable to be set aside.

C 17. In the result, the impugned order of the High Court in Criminal Petition No.252 of 2014 dated 24.4.2014 is set aside and this appeal is allowed and the FIR in Crime No.174/2013 registered against the appellants is quashed.

Kalpana K. Tripathy

Appeal allowed