HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. Pet. 87 of 2017

Shri Padma Mohan Jamatia
son of late Nibaran Chandra Jamatia
resident of Police Lane, Udaipur,
PO: Gakulpur, PS: R.K. Pur, District: Gomati, Tripura.

----Petitioner (s)

Versus

Smt. Jharna Das Baidya
wife of Shri Koushik Baidya,
resident of Matripalli, Badharghat,
P.O. & P.S. : A.D. Nagar, District: West Tripura.

-----Respondent(s)

For petitioner(s)	:	Mr. Raju Datta, Adv.
For Respondent(s)	:	None.
Date of hearing	:	09.08.2018
Date of pronouncement	:	**28.03.2019**
Whether fit for reporting	:	***YES***

HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order

The present criminal revision petition has been preferred against the order dated 16.12.2017 passed by the learned Chief Judicial Magistrate, Gomati, Udaipur in case No. CR(CC)21 of 2017 wherein the learned Court has dismissed the complaint filed by the petitioner under Section 190 of the Code of Criminal Procedure for taking cognizance of the offence committed under Sections 153(a), 153(b), 504, 505 and 506 of IPC.

2. The facts, in a nutshell, are that one Sri Padma Mohan Jamatia filed a complaint petition under Section 190 of the Code of Criminal Procedure against the accused-respondent, Smt. Jharna Das

Baidya that she, being a Member of Parliament and leader of the CPI (M) party, had delivered certain speech on 30.11.2017 at Karbuk under Gomati district. It has been alleged in the complaint that in the said speech, the accused-respondent threatened by stating, that after the 2018 assembly elections were over, the president of State BJP, Sri Biplab Deb and its Chief Campaigner, Sri Sunil Deodhar would not be in the State but the BJP party workers, being the people of the State, would remain in the State and they would have to face dire consequences.

3. The complainant has further stated that during her speech the said respondent also made some provocating remarks in the following terms: *"restrictions on speech by our workers have already been lifted. If restrictions on our arms are also removed then IPFT and BJP workers will not be spared. We have flags, we have sticks too. After the 2018 assembly elections is over, Sunil Deodhar would leave for Maharashtra, Biplab Deb would leave for Delhi to live with his wife but the BJP workers have to stay in Tripura only. After the assembly elections are held in February, 2018, the BJP workers would be taken to task by tooth and nail even before the date of oath taking by the Ministry."*

4. On the basis of the said remarks in the speech, the complainant has stated, that the respondent had categorically threatened the workers supporting the opposition parties, more particularly, the BJP workers, which was sufficient enough to cause breach of peace and tranquility and also with intent to cause fear or

alarm to the public and political workers supporting opposition parties like BJP and IPFT.

5. It has further been alleged that the said speech was also made with intent to create or promote on grounds of place of birth, residence which are sufficient grounds to cause enmity, spread hatred and ill-will between different regional groups and political groups. According to the complainant, the said speech appeared to be prejudicial to the maintenance of peace, harmony and national integration.

6. On receipt of the complaint, the date for examination of the complainant was fixed and on the date so fixed, the complainant along with another witness namely, Abindra Reang were examined under Section 200 of the CrPC and having heard the learned counsel for the parties, the learned Chief Judicial Magistrate, Udaipur, Gomati, Tripura passed the order dated 16.12.2017 wherein the Court had refused to take cognizance of the offence mainly on two grounds:

> (i) The accused being a Member of Parliament ('MP', in short) cannot be prosecuted without obtaining sanction under Section 196 of the Code of Criminal Procedure; and
>
> (ii) The statements and allegations leveled against the accused in the complaint do not attract the ingredients of Section 503 and 506 of the Indian Penal Code

7. Being aggrieved by and dis-satisfied with the impugned order dated 16.12.2017 passed in CR(CC)21/2017 by the learned Chief Judicial Magistrate, Udaipur, Gomati, Tripura, the complainant has preferred the instant criminal revision petition before this Court for setting aside the said order.

8. After filing of the petition before this Court, notice was served upon the respondent but despite receipt of notice, the respondent did not enter appearance before this Court. This Court, on several occasions, gave opportunity to the respondent for appearance but on her non-appearance, this Court ultimately inferred that the respondent was not at all inclined either to make her appearance or to appoint any counsel to represent her case.

9. Mr. Raju Datta, learned counsel appearance for the petitioner has strenuously argued that the impugned order is beyond the parameters of law and facts and the learned Chief Judicial Magistrate ought to have held that the complainant has clearly made out a *prima facie* case under Section 506 IPC against the accused-respondent for which admittedly no sanction was necessary and ought to have issued process against the accused for the said offence.

10. Having regard to the submissions of the learned counsel for the petitioner, I have perused the entire records. I have also perused the contents of the complaint as well as the examination of the petitioner-complainant and his witness, who deposed before the court as PW1 and PW2, respectively.

11. The short issue to be decided in the present petition is:

(i) Whether obtaining of sanction under Section 196 of CrPC is necessary when a person commits any act not in the discharge of his/her official duty; and

(ii) Whether on the allegation as mentioned in the complaint and deposed to by the complainant and his witness, the ingredients of offence punishable under Section 506 Part II IPC are *prima facie* made out warranting summoning of the respondent, as has been done by the learned trial court vide impugned order dated 16.12.2017.

12. The complainant, as PW1 in his examination under Section 200 of CrPC has deposed that he being the President of the Bharatiya Janata Party, Gomati District has filed the complaint stating inter alia, that on 30.11.2017 in a public meeting of the ruling CPI(M) party held at Karbuk, the accused-respondent, who is also a Member of Parliament, while delivering her speech made some provocative remarks and used filthy language. She threatened the BJP workers by saying that the tie of the mouth of the supporters of CPI(M) party was opened and if the tie of the hands of the supporters of the said party were opened then they will not spare the opposition party, specially BJP and the IPFT.

13. It is the further case of the revision petitioner that while delivering the speech, the body language and demeanor of the respondent were enough to instigate the workers. The complainant has further alleged that the accused-respondent also stated that after

elections Sunil Deodhar would leave for Maharashtra and Biplab Deb would leave with his wife but workers of BJP have to stay in Tripura only and after elections and before oath taking of the Ministry, they would see and take action against the BJP supporters in a calculated manner. She also told that to live in Tripura people have to obey the rules of Tripura. The complainant has stated that according to him, the respondent, Smt. Jharna Das (Baidya) has delivered the speech totally against the principles of democracy and after the said speech some instances also occurred in various places of Tripura and supporters and workers of BJP party were under fear which forced him to file this complaint before the Court of learned CJM. He has further stated that he is the voter of Udaipur, RK Pur assembly constituency and he retired from the post of Addl. SP. However, he stated that he was not present in the said meeting held in Karbuk but he heard about the said meeting from one Abindra Reang, who was present in the said meeting. He has also read the said speech in the newspaper and he has seen and heard the same in the local news channels.

14. PW2, Sri Abindra Reang deposed that he is the member of Karbuk Mandal of the BJP. On 13.12.2017 he heard the said speech delivered by the respondent and he corroborated the version of the PW1.

15. On the basis of the aforesaid factual aspects, this Court has to decide whether the speech delivered by the respondent attracts the ingredients of the provisions of Section 506 of IPC.

16. Section 506 IPC reads as under:

> **"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 1[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."**

17. **"**Criminal intimidation" is defined in Section 503 of IPC which reads as under:

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

18. Faced with the first ground of attack as to whether the learned CJM has committed error in law while dismissing the complaint on the ground that the cognizance of any offence cannot be taken against the respondent being a Member of Parliament in absence of proper sanction in view of Section 196 of CrPC, I have given my anxious thought to the definition and requirements of Section 196 of the CrPC. Section 196 of CrPC reads as under:

> **"196. Prosecution for offences against the State and for criminal conspiracy to commit such offence. -**
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> **(1) No Court shall take cognizance of-**
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> **(a) any offence punishable under Chapter VI or under section 153A, of Indian Penal Code, (45 of 1860),or**
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> **(b) a criminal conspiracy to commit such offence, or**
>
> **(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.**
>
> **(1A) No Court shall take cognizance of-**
>
> **(a) any offence punishable under section 153B or sub- section (2) or sub- section (3) of section 505 of the Indian Penal Code (45 of 1860), or**
>
> **(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.**
>
> **……."**

19. After going through this provision, the learned CJM has observed thus:

> **"Thus, it is clear, without sanction no cognizance can be taken for offence punishable under Section 153A/153B/505 of IPC. In this case, as no such sanction is obtained and submitted by complainant, for which, cognizance for offence punishable under Section 153A/153B/505 of IPC cannot be taken."**

20. Mr. Datta, learned counsel appearing for the petitioner has contended that in the facts of the present case, no sanction was required to file a complaint against the respondent because of the fact that the respondent, at the relevant period of time, was not in the discharge of her official duties as the Member of the Parliament but she was delivering a political lecture as a political leader of the CPI(M) party.

21. To deal with this question, in my considered view, Section 197 of the CrPC also is required to be read together with Section 196 of the CrPC. Section 197 CrPC reads as under:

> **"197. Prosecution of Judges and public servants.**
>
> **(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in Lokpal and Lokayuktas Act, 2013]-**
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> **(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;**
>
> **(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:**
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> **[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]**
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> **[Explanation.- For the removal of doubt it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166A, section 166B, Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 370, Section 375, Section 376, Section 376A, Section 376C, Section 376 D or Section 509 of the Indian penal Code (45 of 1860)]**
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> **(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.**
>
> **(3) The State Government may, by notification, direct that the provisions of sub-section (2)**

> **shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.**
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> **[(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.**
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> **[(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]**
>
> **(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."**

22. It is an admitted position and is apparent from the statements made in the complaint that the respondent was addressing a political meeting as a part of campaign in favour of her party. She was not, in any way, in the discharge of her official or state duty as Member of Parliament, being a public servant.

23. A similar question was examined by the Apex Court in ***State of Uttar Pradesh Vs. Paras Nath Singh, (2009) 6 SCC 372*** wherein a three Judge Bench has resolved the issue that when a public servant is not in the discharge of his/her official duties, obtaining of sanction from the appropriate authority is not a *sine qua non*. The Bench has observed thus: [SCC. P. 374, para 6]

> **"6. "10. Prior to examining [whether[the Courts below committed any error of law in discharging the accused it may not be out of place to examine the nature of power exercised by the Court under Section 197 of the Code and the extent of protection it affords to public servant, who, apart from various hazards in discharge of their duties, in absence of a provision like the one may be exposed to vexatious prosecutions. Section 197(1) and (2) of the Code reads as under :**
>
> **"197. Prosecution of Judges and public servants.-(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-**
>
> **(a) in the case of person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;**
>
> **(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government.**
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> *** * ***
>
> **(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government."**
>
> **The Section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is, if the conditions mentioned are not made out or are absent then**

no prosecution can be set into motion. For instance, no prosecution can be initiated in a Court of Session under Section 193, as it cannot take cognizance as a Court of original jurisdiction, of any offence, unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has been committed. So far as public servants are concerned the cognizance of any offence, by any Court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The Section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, 'no Court shall take cognizance of such offence except with the previous sanction'. Use of the words, 'no' and 'shall' make it abundantly clear that the bar on the exercise of power of the Court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'Jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance it means taking notice of. A Court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

11. Such being the nature of the provision the question is how should the expression, 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty', be understood? What does it mean? 'Official' according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In B. Saha and Ors. v. M. S. Kochar [1979 (4) SCC 177] it was held (SCC pp. 184-85, para 17):

"17. The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide

interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an Act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution and the said provision."

(emphasis in original)

Use of the expression, 'official duty' implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or emission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

12. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or mission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance, a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction

shall stand frustrated. For instance, a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in Matajog Dobey v. H. C. Bhari thus: [AIR 1956 SC 44 (P.49, para 18 & 19)]

"17. .....The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty. .....

19. ..... There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty; that the accused could lay a reasonable [claim], but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

13. If, on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then the act must be held as official to which applicability of Section 197 of the Code cannot be disputed.

14. In S. A Venkataraman v. State [AIR 1958 SC 107] and in C. R. Bansi v. The State of Maharashtra [1970(3) SCC 537] this Court has held that: (Venkataraman case, AIR p.111, para 14)

"14. ..... There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a Court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the Court was asked to take congizance, although he had been such a person at the time the offence was committed."

21. That apart, the contention of the respondent that for offences under Sections 406 and 409 read with Section 120-B, IPC sanction under Section 197 of the Code is a condition precedent for launching the prosecution is equally fallacious. This Court has stated the legal position in Srikantiah Ramayya Munnipalli v. State of Bombay [1955 (1) SCR 1177] and in Amrik Singh v. State of Pepsu [AIR 1955 SC 309] that it is not every offence committed by a public servant, which requires sanction for prosecution under Section 197 of

> **the Code, nor even every act done by him while he is actually engaged in the performance of his official duties. Following the above legal position it was held in Harihar Prasad v. State of Bihar [1972 (3) SCC 89] as follows : (SCC p. 115 para 66)**
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> **"66. ……. As far as the offence of criminal conspiracy punishable under Section 120-B, read with Section 409 of the Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act is concerned, they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar."**
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> **22. Above views are reiterated in State of Kerala v. V. Padmanabhan Nair [1999 (5) SCC 690]. Both Amrik Singh (supra) and S. R. Munnipalli (supra) were noted in that case. Sections 467, 468 and 471 IPC relate to forgery of valuable security, Will, etc; forgery for purpose of cheating and using as genuine a forged document respectively. It is no part of the duty of a public servant while discharging his official duties to commit forgery of the type covered by the aforesaid offences. Want of sanction under Section 197 of the Code is, therefore, no bar."**
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> **This position was highlighted in State of H. P. v. M.P. Gupta [2004 (2) SCC 349] at SCC pp. 357-62, para 10 to 14 and 21 - 22".**

24. In the light of the discussions and legal positions as delineated hereinabove, in the context of the present case, it is clear that though the respondent was a Member of Parliament ('MP', in short) and comes within the purview of the definition of 'Public Servant' but she was not discharging any official duty in that capacity and at the relevant point of time she was only discharging her obligations as a leader of a political party which is not related to any of her official duties and responsibilities.

25. Therefore, the findings of the learned CJM that the complaint itself is not maintainable due to want of obtaining sanction against the respondent is untenable in law and this proposition of the learned CJM, on the face of it, is illegal and erroneous and hence, rejected.

26. Now coming to the facts, in view of the statements made in the complaint and during the depositions of witnesses, whether the speech delivered by the respondent attracts the provision of Section 503 and Section 506 of IPC, learned CJM has observed, that for an offence punishable under Section 504 IPC, the intentional insult must be of such a degree that it should provoke a person to break the public peace or to commit any offence.

27. From the statements deposed under Section 200 of the CrPC, particularly, from the Statement of PW1, complainant, it is found that the PW1 has failed to depose and utter any word about the fact that the speech delivered by the accused had provoked any of her party workers to attack or to cause any harm or injury to any of the BJP Workers or superiors with the intention to cause them any harm or grievous hurt. He further found that the statements made during the speech by the respondent were general in nature and vague. Further, the complainant and his witness have failed to show or identify any of the instances that the speech of the respondent had insulted and the provocation was of such a great nature that they had attacked any of their opponents with the intention to cause harm and grievous hurt which further caused them to break the public peace.

28. The Orissa High Court in ***Sriram Chandra Das vs. Krushna Chandra Roy,*** reported in **1970 Cri. L.J. 264** while dealing with the requirements of Section 504 of IPC has held:

> **"11. Section 504, Penal Code, 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 him to break the public peace or to commit any other offence. Therefore, mere abuse will not come within the purview of the section. The offence under this Section can be made out only on proof of the aforesaid three elements including intention or knowledge of the offender that provocation given by him will cause the complainant to break public peace, beyond all reasonable doubt either by positive evidence or by such evidence from which those facts can be conclusively inferred. I have gone through the evidence carefully and I am satisfied that the evidence does not establish all the three aforesaid ingredients of the offence under S.504. Therefore, even accepting the evidence on record, it must be held that the offence under S.504 has not been made out and as such, there cannot be any conviction thereunder."**

29. It would be apposite to refer to the decision of the Hon'ble Supreme Court in ***Fiona Shrikhande vs. State of Maharashtra & Anr.***, reported in **AIR 2014 SC 957** wherein the Apex Court has held as under:

> **"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 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.”**

30. I may gainfully refer to the decision of the Hon’ble Madras High Court in ***Noble Mohandass Vs. State***, reported in ***1989 Cri. L.J. 669*** wherein the Madras High Court has held as under:

> **“7. As far as the offence under Section 506(2) is concerned, the learned counsel for the revision petitioner contended that the threat was not a real one, that it was of the kind of words which are currently and frequently used by people when they are angry and that further the threat was not spoken to by P.W.3 and P.W.4 who by that time had already come to the scene of occurrence. It is, in fact, found from the records that the threat would have been lashed out after P.W.s 3 and 4 came to the place and separated both the husband and wife. Therefore, the evidence of P.W.1 should have been corroborated by the evidence of P.W.3 and P.W.4 who were necessary witnesses to the occurrence. Since they did not corroborate the testimony of P.W.1 in this aspect, the offence cannot be held to be proved. Further for being an offence under Sec.506(2) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does exact mean what he says and also when the person at whom threat is launched does not feel threatened actually. In fact P.W.1 when she filed the complaint to the police officer, did not express any fear for her life nor asked for any protection. Therefore, the offence under S.506(2) is not made out.”**

31. After perusal of the legal positions as expressed by the Apex Court and the High Court, as discussed above, it is clear that to attract the ingredients of Section 503, Section 504 or Section 506 there must be provocation and the provocation should be of such a grave nature that it would force someone to cause bodily harm or grievous hurt to any other person and it should be a real one. Mere use of abusive words or filthy language and body posture during

speech of a political leader will not come within the ambit of the provisions of Section 503/504/506 IPC.

32. In the case at hand, the complainant himself was not the witness of the speech delivered by the respondent. He heard the contents of the speech from PW2. He gained knowledge about the speech from the newspaper and from TV. More so, he could not show any instance to justify that the provocation, as alleged, made anyone from either of the parties, i.e. BJP or the CPI(M) to cause any harm or grievous hurt prejudicial to public peace in any of the localities. In the complaint, the complainant neither expressed any fear to his life nor asked for any police protection. Furthermore, from the contents of the complaint, it is evinced that the respondent did not utter a single word appealing her supporters to immediately attack or cause harm or injury to any of the supporters of the complainant.

33. Furthermore, there is no such statement in the complaint or in the deposition that due to such threat the complainant had omitted to do any act which he was legally entitled to do as a means of avoiding the execution of such threat. It is not the case here that the complainant was so alarmed that he was compelled to stop all of his political activities on behalf of his party.

34. On meticulous scrutiny of the speech as manifest from the deposition of PW1 and PW2, according to me, the contents of the speech were not specific, the statements were vague, omnibus and of general nature which did not come into reality. These are mere political speeches with so many irrelevant deliberations; nothing

concrete and with lots of ambiguities deficient to take cognizance of offence punishable under Sections 504 or 506 of IPC.

35. From the contents of the speech as reproduced in the complaint petition as well in the depositions of PW1 and PW2, it is not clear that it was intended to cause any harm to the reputation, either to the complainant or to any other person. Further, the speech did not lead or motivate anyone to cause any damage to the property of the complainant or any of his supporters or workers.

36. Therefore, in my considered opinion, continuance of the proceedings is sheer abuse of the process of the court of law and it will only waste the valuable time of the Court.

37. After having considered the matter in its entirety, no material to attract the ingredients of offence punishable under Section 506 IPC are made out warranting summoning of the respondent, as has been returned by the learned CJM vide order dated 16.12.2017.

38. Consequently, the instant criminal revision petition, in my considered view, being devoid of merit, stands dismissed and the order dated 16.12.2017 passed by the learned Chief Judicial Magistrate, Udaipur, Gomati District is hereby affirmed and upheld.

Send down the LCRs forthwith.

JUDGE

lodh