

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 6160 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE A.S. SUPEHIA****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

KRISHNAKUMAR CHHAGANBHAI TANDEL

Versus

STATE OF GUJARAT & 1 other(s)**Appearance:**

MR ZUBIN F BHARDA(159) for the Applicant(s) No. 1

MR SHIVANG M SHAH(5916) for the Respondent(s) No. 2

MR HARDIK SONI, APP for the Respondent(s) No. 1

VIKAS V NAIR(7444) for the Respondent(s) No. 2

CORAM: HONOURABLE MR.JUSTICE A.S. SUPEHIA**Date : 28/06/2019****ORAL JUDGMENT**

1. The present application has been filed seeking quashing of the FIR registered at Dholai Marine Police Station, District Navsari being C.R. No.II-1 of 2017 for the offences punishable under Sections 504, 506(2) and 114 of the Indian Penal Code, 1860 ('the ICP' for short).

2. The brief facts of the case leading to filing of the present application are as under:

2.1. The complainant namely Promiskumar Somabhai Tandel has filed complaint on 11.02.2017 *inter alia* alleging that on 13.02.2012, Collector, Navsari allotted 5 hecters of land being plot No.56 falling in Block No.903 of Village Mendhar to the complainant for the purpose of Shrimp Farming pursuant to the application made by the complainant in the year 2009. On 04.02.2017, at around 03:45 p.m., in the evening, the complainant was in the process of constructing the Shrimp Farm and the complainant was standing there at that time, Krishnabhai Chhaganbhai Tandel and one Kayo, who is brother of Ex-Sarpanch of Dholai Village, came to him and told him that he should not construct the shrimp farm nor do any business and asked him to leave from there failing which they threatened to kill him and by using abusive language and thereafter, he left from there. On 06.02.2017, accused Krishnabhai once again threatened the complainant on his mobile phone and thereafter, the complainant was constrained to lodge an F.I.R.

3. Learned advocate Mr.Zubin Bharda appearing for the applicant has submitted that the applicant is a trained aqua culturist and is into the business of shrimp farming since last 25 years. The complainant and the applicant knowing each other as they are hailing from the same village,

by way of mutual understanding that the applicant would cultivate shrimps by putting in labour, expertise and finance and the proceeds of the business would be shared amongst the applicant and the complainant, an application was made by the complainant in the year 2007 to the Collector, requesting for allotment of land for shrimp farming in Brackish water. Pursuant to which, the Collector, Navsari vide order dated 13.02.2012 allotted 5 hectares of land in the name of the complainant for shrimp farming.

4. Learned advocate Mr.Zubin Bharda appearing for the applicant has submitted that after the order of allotment was made by the Collector, the complainant in the end of year 2012 or the beginning of 2013, went to Abu Dhabi (UAE) for work and remained in Abu Dhabi till 2015. He has submitted that on the other hand, and in the meantime, the applicant carried out all the formalities in the name of the complainant and obtained all the necessary and requisite permissions from the Gram Panchayat and also from the adjacent Panchayat which was also objecting the activity of shrimp farming and thereafter, each and every clearance was obtained by the applicant and the applicant after obtaining the necessary sanction started developing the infrastructure. He has also submitted that while the applicant was in the process of developing the shrimp farm, the complainant also returned from Abu Dhabi and after he

returned from Abu Dhabi, he had second thoughts and started raising objections against the development of shrimp farm and its cultivation. He has further submitted that the complainant made an application on 26.10.2015 to the Collector, Navsari alleging that the applicant was not handing over the original documents which the complainant had handed over to the applicant and thereafter, the Collector, Navsari in turn called upon the applicant and the complainant to remain present on 18.11.2015 vide notice dated 02.11.2015 so as to hear both the parties and thereafter, pass necessary order.

5. Learned advocate Mr.Zubin Bharda for the applicant has submitted that in order to see that the construction activity at the farm got stopped with an ulterior intention, the impugned F.I.R. has been filed. He has also submitted that the allegations levelled in the complaint neither discloses any cognizable offence justifying an investigation by the police against the applicant as the applicant is alleged to have been present at the scene of offence and further alleged to have abused verbally the complainant and threatened to kill him if he cultivates the shrimp farm. He has further submitted that the even if the uncontroverted allegations made in the F.I.R. are accepted in their entirety, they do not disclose commission of any offence, for which the impugned F.I.R. has been registered.

6. Learned advocate Mr.Bharda for the applicant has submitted that the impugned F.I.R. does not make out a case of Sections 504 and 506(2) of the IPC since it is not alleged by the complainant that the threat has caused any alarm to him and the F.I.R. has been lodged after a period of seven days and hence, the ingredients of Section 504 IPC would not satisfy to the present case. Thus, he has submitted that the impugned F.I.R. may be quashed and set aside.

7. Learned APP Mr.Hardik Soni, on the instructions of the Investigating Officer has submitted the report dated 28.06.2019, which taken on record. He has submitted that the investigation is over and from the investigation, it appears that the accused had given threat to the complainant on mobile and that time no one was present. The investigation also further reveals that when the incident had occurred, altercation had taken place far away at the pond of shrimp farm.

8. Learned advocate Mr.Vikas Nair appearing for the respondent no.2-complainant has submitted that the impugned F.I.R. may not be quashed and set aside. He has placed reliance on the affidavit filed by the respondent no.2 and submitted that in fact the applicant had threatened the complainant. He has further submitted that at this stage the prosecution may be allowed to be further proceeded.

9. I have heard the learned advocates appearing for the respective parties. I have also gone through the relevant documents as well as the report produced on record.

10. It is not in dispute that the impugned F.I.R. has been lodged for the offence punishable under Sections 504, 506(2) and 114 of the IPC for the incident which happened on 04.02.2017 and the same has been lodged on 11.02.2017 after a delay of 7 days. It is alleged by the complainant that at around 03:45 p.m., he was in the process of constructing the shrimp farm and he was standing there at that time the applicant came to him and asked him not to construct the shrimp farm and further threatened to kill him by using abusive language. No explanation has been tendered by the complainant caused for delay in lodging the FIR.

11. A useful reference can be made to the judgment of the Apex Court in the case of **Kishan Singh (Dead) Through Legal Heirs V/s. Gurpal Singh & Ors., (2010) 8 SCC 775**, more particularly Paragraph No.22 thereof.

“22. In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of

harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case. (vide : Chandrapal Singh and Ors. v. Maharaj Singh and Anr., AIR 1982 SC 1238; State of Haryana and Ors. v. Ch. Bhajan Lal and Ors., AIR 1992 SC 604 : (1992 AIR SCW 237); G.Sagar Suri and Anr. v. State of U.P. And Ors., AIR 2000 SC 754; and Gorige Pentaiah v.State of A.P. And Ors., (2008) 12 SCC 531 : (AIR2008 SC (Supp) 634 : 2008 AIR SCW 6901)."

12. Section 503 of the IPC defines "criminal intimidation", 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. Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section. Illustration A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation."

Section 506 of the IPC prescribes for "Punishment for criminal intimidation", which 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."

13. The offence under Section 506(2) of the IPC is concerned, the same is also not established. Section 503 of the IPC defines "criminal intimidation", which is incorporated 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. Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section. Illustration A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.”

14. It is no more *res integra* that for satisfying the ingredients of Section 503 of the IPC causing of alarm to the complainant or to the victim is *sine qua non* and if the same is missing, no offence under Section 506 of the IPC can be said to have been established. I may with profit refer to the observations made by this Court in the case of **Mehul Chunibhai Choksi vs State of Gujarat**, reported in **2018(1)GLR 349**. This Court while examining the provision of section 503 of IPC has held thus:

“ The essential ingredients The offence of criminal intimidation has been defined under Section 503 of the Indian Penal Code and Section 506 of the Indian Penal Code provides punishment for it. Section 503 reads as under:

"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 threats, commits criminal intimidation.

Explanation: A threat to injure the reputation of any deceased person in whom the persons threatened is interested, is within this section. 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

(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.

46 A bare perusal of Section 506 of the Indian Penal Code 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 an accused had an intention to cause alarm to the complainant. Mere threats given by the accused not with an intention to cause alarm to the complainant, but with a view to deterring him from interfering with the work of construction of the wall, which was undertaken by the accused applicant, would not constitute an offence of criminal intimidation. In the entire FIR, there is no whisper of any allegation that the threats which were administered actually caused any alarm to the first informant and he felt actually threatened.”

In the present case, there is not a whisper in the complaint that the alleged criminal intimidation administered by the applicant had caused any alarm to the complainant, and he actually felt very threatened. Moreover, the delay of seven days in lodging the FIR would substantiate the fact that the alleged criminal intimidation did not cause any alarm, and he did feel any immediate threat to his life. The delay in registering the FIR is itself fatal for the case of the complainant as the same will dilute his allegations of being criminally intimidated by the applicant. Thus, no offence under Section 506 of the IPC as alleged in the FIR is established in the present case. It appears that the impugned F.I.R. has been lodged with oblique motive to wreck vengeance against the applicants due to their rivalry, hence the same is required to be quashed and set aside.

14. In this view of the matter and peculiar facts and circumstances of

the case, this Court is of the considered opinion that the present case would fall within the parameters laid down by the Supreme Court in the case of **Bhajanlal & Ors. (supra)**, whereby 7 categories are narrated as under:

“(1) Where the allegations made in the First Information Report or the FIR, 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 F.I.R. and other materials, if any, accompanying the F.I.R. 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 F.I.R. or FIR and the evidence collected in support of the same do not disclose the commission of any offence and make out the case against the accused.

(4) Where, the allegations in the F.I.R. 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 F.I.R. or FIR 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 bare 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 malafide 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.”

The present case would fall under the aforesaid categories 1 and 7.

15. On the backdrop of the aforementioned analysis, the present application is allowed. Impugned F.I.R. being C.R. No.II-1 of 2017 registered at Dholai Marine Police Station, District Navsari, as well as all other consequential proceedings arising out of the aforesaid F.I.R are hereby quashed and set aside. Rule is made absolute. Direct service permitted.

Sd/-
(A. S. SUPEHIA, J.)

ABHISHEK