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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 27.01.2025

+ **CRL.L.P. 259/2022, CRL.M.A. 10979/2022**

STATE OF NCT OF DELHI

.....Petitioner

Through: Mr. Aashneet Singh, APP
with SI Sahil, PS Karol Bagh

versus

OM PRAKASH AND OTHERS

.....Respondents

Through: Ms. Sunita Arora, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is an application seeking leave to appeal to challenge the judgment dated 22.10.2019 passed by the learned Additional Sessions Judge-II (Central), Tis Hazari Court, Delhi in SC No. 71/2015 titled as “*State v. Om Prakash & Ors.*” wherein the learned Trial Court has convicted the respondents under section 427, 452, 323, 324, 308 read with section 34 of IPC but released them on probation by granting benefit under Section 4 of the Probation of Offenders Act, 1958 (“*PO Act*”) for a period of six months on furnishing a personal bond in the sum of Rs. 10,000/- each with one local surety of the like amount, however, all the respondents were acquitted under section 506 of IPC and respondent No. 3, 4 and 10 were acquitted under section 384 of



IPC.

FACTUAL BACKGROUND

2. Suresh Beswal S/o Kanhiya Lal Beswal, residing at H. No. 2296, Pilli Building, Gurudwara Road, Karol Bagh, operates a restaurant named '*Janta Restaurant*'. On January 30, 2009, while he was at the counter with his father Kanhiya Lal Beswal, alongwith his brother Lalit Beswal, and staff Sunil Kumar, three individuals—Johny S/o Om Prakash, Gaurav S/o Om Prakash and Hunny S/o Jagdish, all residents of Peeli Building, entered the restaurant. They attempted to leave without paying for a packet of cooked fish. When Suresh's father asked for payment, the boys threatened him and left. Shortly after, a man named Kale S/o Om Prakash, armed with an iron rod, returned with Johny, Gaurav, and Hunny. Kale struck Suresh's father on the head with the iron rod. Meanwhile, Golu S/o Pappu and Kunti S/o Pappu also came there and restrained Suresh. Then, Johny attacked Suresh with a wooden stick. Additionally, Shanky S/o Ghanshyam and a neighbor named Hari S/o Ram Lal arrived with a wooden stick and a cricket bat, damaging the fridge, counter, and other items in the restaurant.

3. When Lalit, Suresh's brother, rushed to help their father, Om Prakash S/o Late Ramji Lal and Pappu S/o Late Ramji Lal arrived and began beating Lalit and Sunil with sticks. Vijay S/o Late Babu Lal also joined them and damaged the restaurant's property using a stick. Following the chaos, Suresh called the police at 100, who arrived at



the scene and took the injured - Kanhaiya Lal Beswal, Lalit Beswal and Sunil Kumar to the hospital for treatment.

4. During the investigation, the respondents were arrested and statements from various witnesses were recorded. The Investigating Officer seized broken glass pieces, fragments of a Coca-Cola bottle, sticks and parts of a weighing scale as evidence.

5. On the basis of the investigation, charges under Sections 452/308/323/324/427/506/34 of IPC were settled against the accused persons i.e. respondent Nos. 1 to 11 and charge under Sections 384/34 of IPC were settled against the accused Hunny, Gaurav and Johny i.e. respondent No. 3, 4 and 10, respectively. All the respondents pleaded not guilty to the stated charges and claimed trial.

6. The prosecution examined a total of 21 witnesses, however, none of the respondents led evidence in their defence.

7. After recording of the evidence, the learned Trial Court *vide* impugned judgement dated 22.10.2019, convicted the respondents under Sections 427, 452, 323, 324, 308 read with section 34 of IPC and released them on probation under section 4 of PO Act for a period of six months on furnishing a personal bond in the sum of Rs. 10,000/- each with one local surety of the like amount and all the respondents were acquitted under section 506 of IPC and respondent No. 3, 4 and 10 were acquitted under section 384 of IPC.

8. Aggrieved by the impugned judgement only to the extent of acquittal, the State has filed the present leave to appeal.

SUBMISSIONS ON BEHALF OF THE PETITIONER



9. Mr. Singh, learned APP appearing on behalf of the State submits as under:-

- A. The impugned judgment is perverse and manifestly erroneous of misreading evidence and demonstrably unsustainable in the eyes of law as the learned Trial Court wrongly and erroneously acquitted the respondents under Section 506/34 of IPC and respondent Nos. 3, 4 and 10 under Sections 384/34 of IPC.
- B. The impugned judgment is based on presumptions and assumptions, conjectures and surmises, devoid of merits and as such cannot stand *prima facie* scrutiny of law and thus, all the respondents should be punished under Section 506/34 of IPC and respondent Nos. 3, 4 and 10 should be punished under Sections 384/34 of IPC.
- C. Learned APP further referred to the testimonies of the material witnesses i.e. **PW1, PW2, PW4 and PW17** who were injured during the incident and have deposed about the incident. The testimony of the prosecution witnesses is credit worthy, reliable and supported the case of the prosecution. The evidence of the prosecution witnesses cannot be thrown away, when it has some significance.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

10. *Per contra*, Ms. Arora, learned counsel appearing on behalf of the respondents supports the impugned judgement and submits as follows:-

- A. It is submitted that all the respondents are part of a single



family and have been falsely implicated by the complainant in the present case.

- B.** The respondents submit that there was a small quarrel on the date of the incident which got aggravated due to misunderstanding.
- C.** It is further submitted that the respondents along with the complainant are residing in the same area and known to each other and after this incident they are maintaining cordial relationship and have now settled all their disputes with the intervention of elders of the family and neighbours.
- D.** They have also placed on record the Memorandum of Understanding (MoU) and submitted that the said MoU be treated as their written statement under Section 313 (5) of CrPC.

ANALYSIS AND FINDINGS

- 11. I have heard learned counsel for the parties and perused the material available on record.
- 12. The question which arises for consideration is whether the learned Trial Court has rightly acquitted all the respondents under section 506 of IPC and respondents Nos. 3, 4 and 10 under section 384 of IPC.
- 13. It is pertinent to note that all the material witnesses - **PW1, PW2, PW4 and PW17** have explained in detail the occurrence and the manner in which the incident had taken place and the manner in which they had received injuries. There is no reason why the



testimonies of the said witnesses should be discarded particularly when the medical evidence on record corroborates the oral testimonies of the injured eye witnesses.

Charge under Section 384 IPC - NOT Proved:-

14. Insofar as, the offence punishable under Section 384 of IPC is concerned, the only allegations are that when Kanhaiya Lal Baswal asked for the payment, the respondents threatened by saying that as to how he dared to ask for the payment for the packet of fish.

15. As per the provisions of Section 383 of IPC, which defines ‘*Extortion*’ as under:

“Whoever intentionally puts any person in fear or any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits ‘extortion’.”

16. The Hon’ble Supreme Court in the case of ***Dhananjay @ Dhananjay Kumar Singh v. State of Bihar, (2007) 14 SCC 768*** laid down the following essentials of Section 383 of IPC as under:

“A bare perusal of the aforementioned provision would demonstrate that the following ingredients would constitute the offence:

- 1. The accused must put any person in fear of injury to that person or any other person.*
- 2. The putting of a person in such fear must be*



intentional.

3. *The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security.*

4. *Such inducement must be done dishonestly.”*

17. In the instant case, the respondents did not put the complainant in fear of any injury to deliver any property. The allegations levelled by the complainant are very general in nature. Further, since a fight ensued between the parties after the threats by the respondents, there was no delivery of any property by the complainant to the respondents, thus, the essentials of Section 383 of IPC are not fulfilled in the present case.

18. Therefore, the learned Sessions Court in the impugned judgement has correctly concluded that:

“(49) The allegations leveled by the various prosecution witnesses that the accused persons threatened Kanhaiya Lal Baswal as to how they dared to ask for the payment for the packet of fish, which in do not fall within the definition of Section 383 Indian Penal Code punishable under Section 384 IPC and hence, I hold that the prosecution has not been able to prove the charge under Section 384 IPC against the accused.”

Charges under Section 506 IPC - NOT Proved:-

19. In so far as the charge under Section 506 of IPC is concerned,



the only allegations levelled against the respondents by the complainant is that “...*tab unhone pitaji ko dhamkaya ki tumhari itni himmat ki humse paisa maango, pehle ki baat bhool gaye, lagta hai ki tumhe thik se sabak sikhana padega...*”.

20. Section 503 of IPC defines ‘*Criminal intimidation*’ 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.”

21. A reading of the definition of “*Criminal intimidation*” would indicate that there must be an act of threatening 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. The Court places reliance on the case of *Manik Taneja v. State of*



Karnataka (2015) 7 SCC 423.

22. Therefore, the learned Trial Court in the impugned judgement has rightly appreciated the facts and evidence and denied the charge under Section 506 of IPC on the grounds that the allegations levelled by the complainant are very general in nature and there is no material on record to show that the intention of the respondents was to cause alarm to the complainant.

23. Therefore, the petitioner has not been able to prove and substantiate the charge under Section 506 of IPC against the respondents.

24. Lastly and most importantly, the parties have arrived at a settlement and have also placed on record the MoU.

CONCLUSION

25. For the reasons stated above, the impugned judgment dated 22.10.2019 passed by the learned Sessions Court is well reasoned and based upon the evidence led by the parties

26. For the said reasons, I find no merit in the present leave to appeal.

27. Therefore, the leave to appeal is dismissed.

28. Consequently, the appeal has become infructuous and is disposed of.

JASMEET SINGH, J

JANUARY 27, 2025/DM

(Corrected and released on 06.02.2025)



Click here to check corrigendum, if any