

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SB: Hon'ble Mr. Justice Alok Verma)

MCRC No.7604/2015

Rambharose S/o Ramnarayan Mali
Vs.
State of MP

Shri Vinay Gandhi, learned counsel for the applicants.
Smt. Mamta Shandilya, learned government counsel for the
respondent/State.

ORDER

(Passed on this 18th day of September, 2015)

This application under section 482 of Cr.P.C. is directed against the order passed by learned First Additional Sessions Judge in Cr.R. No.09/2015 dated 01.04.2015 by which learned Additional Sessions Judge confirmed the order passed by the JMFC, Mandsaur in Criminal Case No.3003/2014 dated 13.11.2014 by which, learned JMFC framed charges under sections 341, 294, 323/34 and 506 part – 2 of IPC.

2. According to the prosecution, the prosecutrix was resident of village Akyaumaheda. She was married to one Rambharose S/o Ramnarayan Mali, who is also resident of the same village. She has one son and one daughter out of the wedlock. After marriage, her husband and father-in-law started using abusive language against her and subsequently, she was driven out of the house by them. She filed an application for

maintenance and also an application under the Domestic Violence Act against the present applicants. On 26.09.2014, the complainant and her mother was going to their fields, when the accused Rambharose and his father Ramnarayan came there on motorcycle and stopped them and started using filthy language against them. They also threatened her to withdraw the application from the Court. They pulled her hair and accused Rambharose slapped her. Before going away, they threatened them that if they do not withdraw the application, they would kill them.

3. Aggrieved by this order, present application is filed under section 482 of Cr.P.C. on the ground that no case is made out against them in any of the sections under which charges were framed.

In the charge under section 294 of IPC, their objection is that the incident did not take place at public place and also, no specific words were mentioned in the FIR and for which, they have placed reliance on the order of Co-ordinate Bench of this Court in the case of **Sobaran Singh Vs. State of MP** reported in **JLJ 1962 SN 135**. In that case, the Coordinate Bench of this Court held that the words "*Sala and Behanchod*" are commonly used in colloquial language without a literal significance being attached to them. The use of these words would not come within the purview of section 294 of IPC, which requires the use of obscene songs, balled or words, in or near any public place. In that case, the accused used the words "*Sale Behanchod Pankhon ke*

Neeche Baithe Rahate Hain". However, in that case, the words were not addressed to any particular person and in peculiar facts of that case, words were used without meaning them.

4. However, in the present case, it is stated that abusive language "*Nangi -2 Galiyan*" was used by the applicants.

5. In this case, FIR is not substantive piece of evidence even if, something is not mentioned in the FIR, it can be mentioned in the statements before the Court. Particulars can very well begin the Court. There is no need to state everything in the FIR.

6. This apart, arguments in respect of public place is concerned, as per the FIR, the incident took place on a common way passing beside the field of Nathulal Mali. It is normal that on such road, villagers can be passed and therefore, it cannot be said that the incident did not take place in public place.

7. In this view of the matter, in my considered opinion, there is strong suspicion that the offence under section 294 of IPC is made out.

8. In respect of offence under section 506 part-2 of IPC, it is submitted by counsel for the applicant that only it is stated in the FIR while they were going away, they said that if they would not withdraw the application, they would kill them.

9. For this, counsel for the applicants relies on the order passed by Coordinate Bench of this Court in the case of **Shankarlal Vs. State of MP** reported in

2005(1) MPLJ 449 in which, it was held that threat given by the appellant does not appear to be real in the sense. Nothing to suggest that the appellant meant what he said. No evidence that the victim of the treat felt threatened conviction under section 506 not maintainable and deserves to be set aside. However, this fact, whether, threat given by the accused persons created fear in the mind of complainant, depends upon the facts and circumstance of the case.

10. In the present case, complainant is wife of one of the accused and daughter-in-law of the one of the accused. As a background fact, it was stated that they drove her away from their house and prior to that, they were not treating her properly and these facts clearly show that if threat is given to her by such persons, it is very natural that fear would be created in her mind. Therefore, at this stage, no find conclusion can be drawn that accused persons did not mean what they said. This can only be drawn after recording of evidence.

11. Accordingly, in the considered opinion of this Court, the application is devoid of merit, liable to be dismissed and is hereby, dismissed.

C.c as per rules.

(Alok Verma)
Judge