
(2017) 03 BOM CK 0001

In the Bombay High Court

Case No : Criminal Application No. 3480 of 2016

Sanjay s/o. Kashiram Inche

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 31-03-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, Section 482
Penal Code, 1860 (IPC) — Section 385, Section 500, Section 501

Citation : (2017) 2 AIRBomRCri 359 : (2017) 2 MhLJCrI 764

Hon'ble Judges : S.S. Shinde and K.K. Sonawane, JJ.

Bench : Division Bench

Advocate : Ms. Maya R. Jamdhade, Advocate, for the Applicants; Mr. S.Y. Mahajan, APP, for the Respondent/State; Mr. V.R. Autade, Advocate, for the Respondent No. 3

Final Decision : Allowed

Judgement

S.S. Shinde, J.—This Application is filed praying therein for quashing the First Information Report bearing Crime No.260/2016, registered with Jalna Taluka Police Station, Jalna, for the offence punishable under Sections 385, 500, 501 r/w. 34 of the Indian Penal Code.

2. The learned counsel appearing for the applicants invites our attention to the allegations in the FIR and submits that, even if the allegation in the FIR are taken at its face value and read in its entirety, an alleged offences are not disclosed, and therefore, the FIR deserves to be quashed. She further invites our attention to the provisions of the Sections 385, 500 and 501 r/w.34 of the IPC and submits that, the ingredients of the said alleged offences are not disclosed. She submits that, the Division Bench of the Bombay High Court, Bench at Aurangabad, in the case of Shriram Satwaji Jadhav v. The State of Maharashtra & Ors.2014 ALL MR [Cri.] 3643, has quashed the FIR on the ground of delay in lodging the FIR. She submits that, in the present case also there is delay in lodging the FIR. She submits that, in the FIR there is no allegation that, the

amount was actually given to the accused. In support of her contention that, the FIR lodged by the informant-respondent no.3 is mala fide, and based on vague assertions, and therefore, the same deserves to be quashed, she placed reliance in the case of Baijnath Jha v. Sita Ram and Anr. AIR 2008 SC 2778. She also invites our attention to the judgment of the learned Single Judge of the Andhra Pradesh High Court in the case of Battula Siva Nageshwar Rao v. Jasti Venkateswara Rao in Criminal Petition No.7873 of 2010, decided on 31.03.2016, and particular in para 12 thereof and submits that, in case there is no allegation in the complaint that the accused by putting the informant in fear of injury has committed alleged offence, in that case FIR deserves to be quashed. She further invites our attention to the judgment of the Supreme Court in the case of Isaac Isanga Musumba and others v. State of Maharashtra and others [2014] 15 SCC 357 and submits that, to attract the ingredients of Sections 383 and 384, it should be mentioned in the FIR that, the amount so demanded was delivered to the accused by the informant. Therefore, she submits that, the FIR deserves to be quashed.

3. On the other hand, the learned APP appearing for the respondent-State invites our attention to the investigation papers and submits that, during investigation it is transpired that, the applicants were involved in the alleged offence. In the present case, Section 385 is mentioned in the FIR, and the judgments on which reliance is placed by the learned counsel appearing for the applicants are in relation to the interpretation of the provisions of Sections 383 and 384 of the IP Code. He submits that, the witnesses have stated that, as a matter of fact the applicants demanded the amount, and therefore, the provisions of Section 385 and other Sections mentioned in the FIR are attracted, and the alleged offences are disclosed against the applicants, therefore, further investigation is necessary.

4. The learned counsel appearing for respondent no.3 invites our attention to the averments in the affidavit-in-reply. He submits that, the applicants will have to satisfy that the complaint lacks ingredients of Section 385 of the IP Code. The applicants intentionally putting respondent no.3 in fear of injury and tried to extract money. The accused/applicants threatened to publish a defamatory material concerning respondent no.3, with demand to respondent no.3 that, unless he gives them money, they will publish defamatory statement against respondent no.3. It is further submitted that, all the accused dishonestly induced respondent no.3 to give them money, and thereby they have committed offence of extortion. The ingredients of Section 385 are clearly attracted. He submits that, there is sufficient material against all the accused/applicants, and therefore, the application for quashing FIR may be rejected. The applicants are having criminal antecedents and the various offences have been registered against them, under the Indian Penal Code and the Arms Act. Even the respondents are having necessary documents to show that applicant no.3 - Sudhakar Mohanrao Nikalje has involved in criminal cases in commission of offence in past. He submits that, even the offences punishable under Sections 384 and 386 are also registered against applicant no.3 - Sudhakar Mohanrao Nikalje. In support of his

contention that, to attract ingredients of Section 385 of the IP Code actual delivery of amount is not necessary, he invites our attention to the judgment of the Rajasthan High Court in the case of *Biram Lal v. State* RAJLW 2007 (1) 713.

5. We have carefully considered the submissions of the learned counsel appearing for the applicants, learned APP appearing for respondent-State, and the learned counsel appearing for respondent no.3. With their able assistance, we have carefully perused the allegations in the FIR, and the investigation papers made available by the learned APP. It appears that, the accused - applicants attended one function in Saffron Hotel. Applicant no.1 Sanjay Kashiram Inche and applicant no.2 Dnyaneshwar Dagaduji Nande attended the said function without invitation, and in that function applicant no.1 and applicant no.2 conducted video shooting/video clips of the said function in their mobile, and on the basis of said video clips stored in their mobile along with other three accused i.e. applicant nos.3 to 5 so as to extract money from respondent no.3 and other Officers decided to visit those Officers, and accordingly, under the fear of causing injury to the reputation of respondent no.3, and other Officers demanded money. There are statements of witnesses, who attended the said function in Saffron Hotel at Jalna. Upon perusal of the allegations in the FIR, an alleged offences have been disclosed, and those needs investigation. At this stage, this Court is not supposed to find out the correctness of those allegations. Reliance placed by the learned counsel appearing for the applicants on the observations made by the Supreme Court in the case of *Isaac Isanga Musumba* [cited supra] is misplaced in the facts of the present case inasmuch as in the present case alleged offences are under Section 385, 500, 501 r/w. 34 of the IPC so as to attract ingredients of Section 385, it is not necessary to mention in the complaint that the amount so demanded is actually delivered to the accused.

6. It further appears from the perusal of the allegations in the FIR that the applicants in order to extract the amount/money from respondent no.3 published news in daily "Duniyadari" dated 20th June, 2016, and thereby causing injury to the reputation of respondent no.3 by publishing a false allegation. Therefore, in our opinion, no case is made out for quashing the FIR, hence, application stands rejected.

7. The observations made herein before are prima facie in nature and confined to the adjudication of the present application only. This order will not preclude the applicants from applying for discharge in the event of filing charge-sheet by the Investigating Officer.