

(2017) 04 BOM CK 0036
In the Bombay High Court
Case No : 506 of 2017

Shaikh Mujib s/o Shaikh Bhikan

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 07-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 34](#), [Section 384](#), [Section 17](#)

Citation : (2017) 04 BOM CK 0036

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

Bench : DIVISON BENCH

Advocate : N.E. Deshmukh, P.G. Borade, A.S. Bajaj

Judgement

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.
2. The applicants taking recourse of remedy under section 482 of the Criminal Procedure Code (for short " Cr.P.C .) preferred the present application to quash and set aside first information report bearing crime No. 426 of 2016 registered against applicants at MIDC, CIDCO Police Station, Aurangabad for the offence punishable under section 384 read with section 34 of the Indian Penal Code (for short " IPC "). According to the applicants, the impugned FIR is absolutely false, frivolous and filed with intention to harass the applicants. The allegations did not constitute any offence nor make out any case against the applicants.

3. It has been alleged that first informant Parvaz Nazer Hussain Jaffery i.e. Respondent No. 2-herein has purchased house property constructed on the plot No. 23 of Survey No. 16/3 located in Hussain Colony, Aurangabad from one Mr. Hakimkhan Rum Khan and Yunuskhan Mohamad Khan. After purchase, the house property was let out to one Shaikh Bhikan Shaikh Ibrahim on rent for eleven months agreement. However, the tenant Shaikh Bhikan left the house and his sons, applicants Shaikh Ajim and Shaikh Mujib started residing in the house. They did not bother to pay rent of the house occupied by them. Therefore, the first informant was insisting applicants - Shaikh Ajim and his brother Shaikh Mujib to vacate the premises occupied by them. But, respondent No. 2 first informant did not receive response from them. In contrast, applicant Shaikh Ajim S/o Shaikh Bhikan filed civil suit bearing RCS No. 34 of 2015 in the Court of Civil Judge, Junior Division, Aurangabad against first informant Parvez Nazer Hussain Jaffery for relief of injunction etc. The applicants also demanded Rs. Two Lakhs from first informant for vacating the premises. According to first informant, on the date of incident i.e. on 02-11-2016 in the noon hours about 2.00 p.m. the alleged accused i.e. applicants herein came to godown of the first informant and gave threats of dire consequences to him. They hurled abuses and stated that if he wants to get premises/house vacated and the possession of the same, he would have to pay Rs. 10,00,000/-(Rupees Ten Lakhs) to them otherwise they will not vacate the premises. Accordingly, the first informant ventilated the grievance that applicants made demand of ransom of Rs. 10,00,000/- from him and gave threats to life for vacating the premises. Therefore, he rushed to MIDC CIDCO Police Station and filed the report.

4. Pursuant to FIR of respondent No. 2- Parvaz Nazer Hussain

Jaffery, police of MIDC CIDCO Police Station registered the offence bearing crime No. 426 of 2016 under section 384 read with section 34 of the IPC and set the penal law in motion. The impugned FIR is under the judicial scrutiny in this application by exercising inherent powers under section 482 of the Cr.P.C. at the behest of applicants herein.

5. The learned counsel Mr. Deshmukh appearing for the applicants assailed that the impugned FIR is false, frivolous and filed with malafide intention to harass the applicants. The allegations contained in the FIR does not make out offence under section 384 of the IPC. There was no delivery of any property or valuable security to the accused/applicants from first informant who was put in fear to attract ingredients of section 384 of the IPC. According to learned counsel, the provisions of section 383 of the IPC contemplates dishonest inducement and obtaining delivery of property in consequence of such inducement. In the instant case, no any offence is made out against the applicants as alleged in the impugned FIR. The allegations nurtured on behalf of first informant are not sufficient to draw the inference of delivery of property or valuable security in favour of applicants under the fear. The learned counsel fervidly contended that the present FIR is nothing but an abuse of process of law and filed with malafide intention to harass the applicants. The learned counsel in support of his submissions placed reliance on the expositions in the case of State of Harayana Vs. Bhajanlal, AIR 1992 SC 604, Dhananjay alias Dhananjay Kumar Singh Vs. State of Bihar and another, (2007)¹⁴ Supreme Court Cases 768 and Isaac Isanga Musumba and others Vs. State of Maharashtra and others, (2014)¹⁵ Supreme Court Cases, 357. and Sudarshan Kumar Luthra and others Vs. Madanlal Harichand Thapar and another, 1993(3) Mh.I.J.854.

6. Per contra, the learned APP appearing for the State and learned counsel appearing for respondent No. 2 vociferously opposed the contention propounded on behalf of applicants. Respondent No. 2 has also filed his affidavit in reply on record. It has been submitted that the allegations contained in the FIR filed on behalf of respondent No. 2 if considered in its entirety and are taken at its face value would constitute cognizable offence punishable under section 384 of IPC. The respondents denied that impugned FIR is false, frivolous and filed with intention to harass the applicants. The respondents prayed to dismiss the application.

7. We have considered the submissions canvassed on behalf of both sides. We have also delved into the documents filed on record. After appreciating the attending circumstances and factual scenario as referred to in the impugned FIR, we find that the arguments advanced on behalf of learned counsel for the applicants Mr. Deshmukh appears much more attractive and sustainable one. The allegations contained in the impugned FIR does not disclose the essential ingredients of section 384 of the IPC. The provisions of section 384 contemplates punishment for extortion. However, the offence of extortion is defined in Section 383 of the IPC, which reads as under:

"383 Extortion- whoever intentionally puts any person in fear of 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 covered into a valuable security, commits"

Extortion."

8. Perusal of aforesaid definition of extortion as envisaged under section 383 of the IPC adumbrates that following ingredients are required to be established to constitute an offence under section 384 of the IPC and same are also reproduced by the Hon"ble Supreme Court in paragraph No. 6 of the Judgment in the case of Dhananjay supra, which read thus:

- (i) The accused must put any person in fear of injury to that person or any other person.
- (ii) The putting of a person in such fear must be intentional.
- (iii) The accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed.
- (iv) Such inducement must be done dishonestly.

9. In the matter in hand, it reveals that applicants on the day of incident visited to the Godown of first informant - Parvaz Nazer Hussain Jaffery i.e. respondent No. 2 herein and they placed demand of Rs. 10,00,000/- (Rupees Ten Lakhs) to get premises vacated occupied by them. The applicants have also given threats of dire consequences if money is not paid to them. They have also exhorted that they will not deliver the possession of the premises in favour of respondent No. 2 - first informant without money. These circumstances reflect from the recitals of the FIR, categorically demonstrate that there was no delivery of the property or valuable security in favour of applicants - accused on the part of first informant after putting him under fear.

10. We reiterate that, in order to constitute an offence of extortion, it is essential to establish that accused must put the victim in fear of injury to him or any other person and thereby induces him dishonestly to deliver any property or valuable security. As referred supra the impugned FIR does not disclose all these ingredients to constitute the cognizable offence under section 384 of the IPC.

11. The Hon'ble Supreme Court in the case of Isaac Isanga Musumba and others Vs. State of Maharashtra and others referred supra held that unless property is delivered to the accused persons pursuant to the threat, no offence of extortion is made out and the FIR for the offence of extortion under section 384 could not

have been registered by the Police. In the case of Dhananjay alias Dhananjay Kumar Singh Vs. State of Bihar and another referred supra, the Hon"ble Apex Court after appreciating the requirement of section 384 of the IPC observed in paragraphs No. 10 to 13 as under:

"10. No allegations was made that the money was paid by the informant having been put in fear of injury or putting him such fear by the appellant was intentional.

11. The first informant, admittedly, has also not delivered any property or valuable security to the appellant.

12. A distinction between theft and extortion is well known. Whereas offence of extortion is carried out by overpowering the will of the owner; in commission of an offence of theft the offender"s intention is always to take without that persons" consent.

13. We, therefore, are of the opinion that having regard to the facts and circumstances of the case, no case under section 384 of the Penal Code was made out in the first information report."

12. In view of aforesaid legal guidelines delineated by the Hon"ble Supreme Court, in our opinion, from the allegations nurtured in the impugned FIR there was no offence under section 384 of IPC committed as alleged on behalf of respondent No. 2. There was no any property or valuable security was shown delivered in favour of applicants- accused by the first informant pursuant to any act of accused putting him in fear of injury to himself or any other person. Therefore, we are of the opinion that the impugned FIR does not make out any prima facie case against the applicants for penal proceedings under section 384 of the IPC. Moreover, it has contended that there are other civil and criminal proceedings going on in between the applicants and respondent No. 2 on account of contentious house property. In such circumstances, we do not find any impediment to appreciate the contentions put forth on behalf of applicants that impugned FIR is the fallout of malice and rancour as

well as ulterior motive to wreak vengeance on the part of first informant against applicants. Therefore, considering the categories of cases by way of illustration laid down in paragraph No. 108 of Bhajanlal's Case referred supra, we have no hesitation to exercise the powers under section 482 of the Cr.P.C. in favour of applicants to prevent abuse of process of law.

13. In such peculiar circumstances, we are of the opinion that the impugned FIR do not disclose the essential ingredients of offence under section 384 of the IPC. The allegations are not sufficient to make out prima facie cognizable offence against applicants. Hence, there is no impediment to quash and set aside the impugned FIR filed against the applicants under section 384 read with section 34 of the IPC. In the result, we proceed to allow the application of the applicants for quashing the FIR. Accordingly, criminal application is allowed in terms of prayer clause "A". The impugned FIR bearing Crime No. 426 of 2016 dated 08-11-2016 registered at MIDC CIDCO Police Station under section 384 read with section 34 of the IPC is hereby quashed and set aside. The rule is made absolute in above terms. No order as to costs.