

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

Judgment delivered on: March 15,2011

+ **CRL.M.C. NO. 2688/2010**

MICHAEL LEBON

....PETITIONER

Through: Rajeev Sirohi, Advocate

Versus

THE STATE & ANOTHER

....RESPONDENTS

Through: Ms. Fizani Husain, APP for R-1.

Mr. Gaurav Bansal, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. This is a petition under Section 482 CrPC seeking quashing of FIR No. 736/2004 registered under Sections 420/403/506 IPC at P.S. Kalkaji on the direction of the learned Metropolitan Magistrate under Section 156(3) CrPC.

2. This case has a long history. Briefly stated, the facts relevant for disposal of this petition are that on 01st August, 2003, Mary Manuel, respondent No. 2 addressed a complaint in writing to Assistant Commissioner of Police, Crime Against Women Cell, wherein she prayed that a case be registered against Francis

Miranda and investigated in accordance with law. In the said complaint, only allegation against the petitioner was that he had introduced respondent No. 2 to Francis Miranda five years earlier.

3. That a notice dated 23rd March, 2004 was sent by the complainant/respondent No. 2 to the petitioner Michael Lebon through her advocates wherein it was alleged that the petitioner had approached respondent No. 2 with a request for a short term loan of ₹ 20,000/-. He made a false representation that he required money for treatment of his ailing family member and believing that representation, respondent No. 2 advanced a loan of ₹ 20000/- to the petitioner vide cheque No. 361296 dated 10th July, 2003 drawn on Bank of Rajasthan, Panchsheel Enclave, New Delhi and that cheque was encashed by him. Vide said notice, the petitioner was called upon to return the loan amount with 12% interest.

4. That respondent No. 2 also filed a complaint dated 22nd March, 2004 under Sections 200/156(3) CrPC in the court of learned Metropolitan Magistrate, New Delhi and learned Metropolitan Magistrate, on consideration of said complaint issued direction to the SHO, P.S. Kalkaji to register a case on the basis of the complaint. Pursuant to the said direction, FIR No. 736/2004 under Sections 420/403/506 IPC was registered against the petitioner and Francis Miranda at Police Station Kalkaji.

5. In the said complaint, respondent No. 2 claims that the petitioner Michael Lebon introduced her to Francis Miranda about six years earlier. In first week of April, 2003, the petitioner and Francis Miranda visited the house of respondent No. 2 and represented to her that the divorce proceedings between Francis Miranda and his wife were pending in Family Court at Agra and the wife of Francis Miranda was demanding ₹ 2,50,000/- as alimony as a condition for consenting to divorce. They also showed the relevant divorce proceedings papers to the complainant/respondent No.2 with a view to induce her to part with ₹ 2,50,000/-. Since respondent No. 2 was pregnant and she was keen to marry Francis Miranda, she arranged and gave ₹ 2,50,000/- to Francis Miranda. For that purpose, she also borrowed a sum of ₹ 1,30,000/- at 12% interest from one Prem Singh of Tibetan Market. Respondent No. 2 also claims that after receiving ₹ 2,50,000/-, the behaviour of Francis Miranda towards her changed and she was beaten by Francis Miranda on 09th May, 2003. Consequently, she started bleeding and rushed to Moolchand Hospital for treatment, where her baby was aborted on 30th May, 2003. Respondent No. 2 further claims that the petitioner visited her on 10th July, 2003 and asked for ₹ 20,000/- for making payment to the lawyer for the divorce proceedings. Believing the representation of the petitioner, respondent No. 2 claims to have given a cheque worth ₹ 20,000/-, bearing No. 36123 dated

10.07.2003 drawn on Bank of Rajasthan, Panchsheel Enclave, New Delhi.

6. Learned counsel for the petitioner submits that the FIR No. 736/2004 lodged on the basis of complaint filed by the respondent No. 2 is liable to be quashed for the reason that it is nothing but a bunch of falsehood against the petitioner and the FIR is motivated with the intent to extort money from the petitioner and the co-accused Francis Miranda. In support of this contention, learned counsel for the petitioner submitted that if the version in the complainant is to be believed, the petitioner took cheque of ₹ 20,000/- from respondent No. 2 on the representation that aforesaid money was required for payment to the lawyer of Francis Miranda in the divorce proceedings. It is contended that however, this version is contradictory to the stand taken by the respondent No.2 in the legal noticed dated 23rd March, 2004 addressed to the petitioner wherein respondent No. 2 has claimed that the petitioner borrowed aforesaid ₹ 20,000/- on the pretext that money was required by him for treatment of his ailing family member. Learned counsel has pointed out that in the notice also, same cheque number has been referred to which is mentioned in the FIR. From this, learned counsel urged this court to infer from above contradiction that respondent No. 2 is not telling the truth and she has falsely implicated the petitioner with a view to extract money. As regards

the involvement of the petitioner in extracting ₹ 2,50,000/- from the complainant by misrepresentation, learned counsel argued that this version apparently, is false for the reason that as per the complaint, the petitioner and his co-accused had allegedly taken ₹ 2,50,000/- from the complainant/respondent No. 2 in the first week of April, 2003. Had this version been true, this allegation obviously would have found mention in the complaint dated 01st August, 2003 addressed by the respondent No. 2 to ACP, seeking registration of case against Francis Miranda. Learned counsel has drawn my attention to the complaint dated 01st August, 2003 addressed to the Assistant Commissioner of Police, Crime Against Women Cell, Nanakpura, wherein complainant/respondent No. 2 has alleged that she gave ₹ 2,50,000/- to Francis Miranda as she was pregnant and wanted to marry him and that Francis Miranda threatened to leave her in case she did not part with a sum of ₹ 2,50,000/- which was to be paid to wife of Francis Miranda in the divorce proceedings as alimony. In this complaint, there is no allegation against the petitioner. Therefore, it is obvious that the name of the petitioner has been dragged in the FIR as an improvement.

7. Learned counsel for the petitioner further contended that during the pendency of proceedings, complainant had settled the matter with the petitioner and co-accused of the petitioner for Rs. 2,50,000/- and after receiving that money in the form of Rs.

1,20,000/- by demand draft in her favour and Rs. 1,30,000/- by demand draft in favour of Prem Singh, she has backed out from the compromise. She even agreed to settle the matter with the petitioner for Rs. 10,000/- in the Lok Adalat, but later she backed out of said compromise. In view of the above, learned counsel for the petitioner has urged for quashing of the FIR qua the petitioner.

8. Learned counsel for the respondent No. 2/complainant, on the other hand, has submitted that though certain talks regarding settlement took place between the complainant and the accused persons including the petitioner in Lok Adalat, no settlement was arrived at. Learned counsel has referred to the order of learned M.M. dated 26th August, 2004 wherein he has inter alia observed: "It is contended that besides introducing the co-accused Francis Miranda to the complainant, applicant has also taken away blank cheque of ₹ 20000/- from the complainant, which was later on encashed in the name of niece of co-accused". From this, learned counsel for the respondent No. 2/complainant has urged this court to infer that the petitioner made an admission about having received cheque of ₹ 20,000/- from the complainant, which shows his complicity in the offence. Learned counsel for the respondent No. 2 further submitted that the petitioner is not a truthful person and he has tried to mislead the court. Thus, it is urged that the petition under Section 482 CrPC be dismissed.

9. I have considered the rival submissions and perused the record. On perusal of the complaint dated 22nd March, 2004 filed by the respondent No. 2 in the court of Metropolitan Magistrate, New Delhi, it transpires that in the said complaint, respondent No. 2 had alleged that the petitioner induced her to give him cheque No. 36123 dated 10th July, 2003 for ₹ 20,000/- drawn on Bank of Rajasthan by misrepresenting that aforesaid money was required for payment of fee to the lawyer in the divorce proceedings of the co-accused Francis Miranda pending in Agra Court whereas respondent No. 2 in her legal notice dated 23rd March, 2004 has come out with a different story by claiming that aforesaid cheque of ₹ 20,000/- bearing No. 361296 dated 10th July, 2003 was given by her to the petitioner on his misrepresentation that he required said money as a short term loan for treatment of his ailing family member. Not only this, perusal of the complaint dated 01st August, 2003 addressed by the respondent No. 2 to Assistant Commissioner of Police, Crime Against Women Cell, reveals that in the complaint, there is no allegation against the petitioner and respondent No. 2 had only asked for registration of case against Francis Miranda. The role ascribed to the petitioner in the said complaint is that five years earlier, he had introduced Francis Miranda to respondent No. 2.

10. The complaint addressed to the Assistant Commissioner of Police is dated 01st August, 2003 i.e. after the loan allegedly given

by respondent No. 2 to the petitioner vide cheque No. 361296 for ₹ 20,000/-. Had the version of respondent No. 2 in this regard been true, there would have been mention of the same in the complaint addressed to A.C.P. In view of the aforesaid contradictory stands taken by the respondent No. 2, it can be safely inferred that the allegations of the respondent No. 2 are not reliable and she has roped in the petitioner as an accused in her complaint only for the reason that he is a friend of Francis Miranda and he had introduced respondent No. 2 to Francis Miranda.

10. Further, perusal of the copy of the order dated 26th October, 2004 of learned Additional Sessions Judge, New Delhi reveals that on 26th October, 2004, a settlement was arrived at between the parties. Pursuant to the settlement, it was agreed that the accused Francis Miranda shall pay a sum of ₹ 2,50,000/- to the respondent No. 2 out of which, a sum of ₹ 1,20,000/- shall be paid to the complainant/respondent No. 2 by way of a bank draft in her favour and balance ₹ 1,30,000/- shall be paid to Sh. Prem Singh in the concerned court where a suit for recovery against the complainant/respondent No. 2 was pending. It was also agreed that after the entire payment, the complainant/respondent No. 2 shall co-operate with the accused in compounding the offences under FIR No. 736/2004, P.S. Kalkaji. Order dated 10th January, 2005 of learned M.M. in the same matter records that aforesaid settlement

was complied with by the accused but the respondent No. 2/complainant showed her inability to compound the case with the accused persons unless she was paid a further sum of ₹ 20,000/-. Perusal of order dated 29th January, 2005 shows that the accused persons, with a view to settle the matter, offered to pay a sum of ₹ 10,000/- to the complainant/respondent No. 2 which she agreed to accept after initial reluctance. Therefore, it was ordered that matter be listed before Lok Adalat. However, in the Lok Adalat on 06th March, 2005, respondent No. 2/complainant backed out of said agreement and insisted on payment of ₹ 20,000/- to her.

11. From the aforesaid factual matrix, it is obvious that the complainant/respondent No. 2, after having arrived at a settlement and receiving the payment, has backed out of the settlement and demanded ₹ 20,000/- more, which demand was later on reduced to ₹ 10,000/- and then increased to ₹ 20,000/- again. From this, it appears that motive behind the FIR is to extract money from the petitioner. Therefore, in my considered view, this is a fit case in which interference by this court under Section 482 CrPC is called for.

12. In view of the above, petition is allowed and the FIR No. 736/2004 under Sections 420/403/506 IPC, registered at P.S. Kalkaji as well as the consequent proceedings arising therefrom qua the petitioner is quashed.

13. It is clarified that observations made in this order shall not be taken as observation of this court on merits of the case qua the accused Francis Miranda.

14. Petition stands disposed of.

(AJIT BHARIHOKE)
JUDGE

MARCH 15, 2011

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