

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Appl. (C482) No. 1739 of 2023

Ravi Papnai Applicant

vs.

State of Uttarakhand & Anr. Respondents

Present:

Mr. P.C. Petshali, the learned counsel for the petitioner.
Mr. Kuldeep Singh Rawal, the learned A.G.A. for the State.
Mr. Yogesh Upadhyay, the learned counsel for the complainant.

Hon'ble Sharad Kumar Sharma, J.

Heard.

2. In this C482 petition, the challenge given by the present applicant is to the proceedings of Criminal Case No. 1927 of 2021, State vs. Ravi Papnai, being the proceedings drawn for against the present applicant for the offences under Sections 504, 506, 386, 501, 509 and 354-D of IPC. As a consequence of the registration of aforesaid criminal case, the summoning order has been issued against the present applicant, being the summoning order dated 20.02.2021.

3. The C482 application is listed along with the compounding application, wherein the complainant has stated in her affidavit filed in support thereto, that she

wants to mitigate the offence for which trial is pending consideration, owing to the fact that, subsequently she is married to another male. Out of the said matrimony she has got a child and, hence, she wants to dilute all the offences, in order to have a peaceful married life which she is having with another male.

4. The C482 application is being vehemently opposed by the learned Government Advocate on the ground, that two of the offences, i.e., offence under Section 386 and Section 354-D of IPC are not compoundable, as such the compounding application may not be considered by this Court, in exercising its inherent powers under Section 320 of the Code of Criminal Procedure, but, in order to meet out the objection as raised by the Government counsel, this Court is of the view, that so far as the allegation pertaining to the offence under Section 386 of IPC is concerned, the provisions contained under Section 386 IPC, if it is taken into consideration which deals with an extortion. For extortion the basic element which is required therein which could be derived from the definition of extortion as given under Section 383 IPC, which specifically uses the word that "the person so put in fear to deliver to

any person” meaning thereby, that the primary ingredients required for the purposes of commission of the offence under Section 386 IPC for extortion there has had to be an actual delivery of the amount to the other person to make out an offence under Section 383 IPC to be read with Section 386 IPC.

5. The aforesaid principle as to under what circumstances the offence under Section 386 IPC could be made out, was dealt with by the Hon’ble Apex Court in the judgment reported in **2023 SCC Online 94, Salib @ Shalu Salim vs. State of U.P. & Ors.**, wherein the Hon’ble Apex Court in para 22 of the said judgment has observed, that for the purposes of commission of an offence under Section 386 IPC, its necessary ingredients for the offence of ‘extortion’ is that victim must be induced to deliver any person any property or valuable security. Thus, the Court has observed that ultimately in the absence of there being an actual delivery, the offence under section 386 IPC, could not be made out, because for extortion under Section 386 IPC, there has had to be an actual delivery of the valuable security. Relevant paragraphs 22 and 25 are extracted hereunder:-

“22. So from the aforesaid, it is clear that one of the necessary ingredients of the offence of extortion is that the victim must be induced to deliver to any person any property or valuable security, etc. That is to say, the delivery of the property must be with consent which has been obtained by putting the person in fear of any injury. In contrast to theft, in extortion there is an element of consent, of course, obtained by putting the victim in fear of injury. In extortion, the will of the victim has to be overpowered by putting him or her in fear of injury. Forcibly taking any property will not come under this definition. It has to be shown that the person was induced to part with the property by putting him in fear of injury. The illustrations to the Section given in the IPC make this perfectly clear.

25. Thus, it is relevant to note that nowhere the first information has stated that out of fear, she paid Rs. 10 lakh to the accused person. To put it in other words, there is nothing to indicate that there was actual delivery of possession of property (money) by the person put in fear. In the absence of anything to even remotely suggest that the first information parted with a particular amount after being put to fear of any injury, no offence under Section 386 of the IPC can be said to have been made out.”

6. Thus, it is apparent from the aforesaid principle, that no offence under Section 386 IPC could be said to be made out as against the present applicant, coupled with the fact that Hon'ble Bench of Chattisgarh High Court in the matters of *Shatrughan Singh Sahu vs. State of Chattisgarh*, as reported in (2022) 1 CGLJ 132, was considering almost the similar issue as to under what circumstances the offence under Section 386 IPC, could be said to be made out as against an accused person, and the Court has dealt with the said aspect in para 17

of the said judgment, wherein by giving its logic in paragraph 16, ultimately has drawn its conclusion in para 17 that the offence of extortion would only be made out when it is proved that the amount was delivered out of fear or an injury. These two elements are not being satisfied in the instant case, with the allegations leveled in the FIR or in the charge sheet which was ultimately submitted by the Investigating Officer. Relevant paragraph 17 is extracted hereunder:

“17. Thus, what is necessary for constituting an offence of ‘extortion’ is that the prosecution must prove that on account of being put in fear of injury, the victim was voluntarily delivered any particular property to the man putting him into fear. If there was no delivery of property, then the most important ingredient for constituting the offence of ‘extortion’ would not be available. Further, if a person voluntarily delivers any property without there being any fear of injury, an offence of ‘extortion’ cannot be said to have been committed.”

7. So far as the other non-compoundable offence under Section 354-D IPC is concerned, though, the act of ‘stalking’ was said to be made out as against the present applicant as stated by the complainant who is present in person, but, there has had to be a harmonious construction for the purposes of dealing with a litigation in a changed circumstances where the complainant submits that owing to the fact, that she is

now married and, she is having a child, no fruitful purpose will be served to carry out the present proceedings and even if remotely an offence under Section 354-D IPC, is said to have been made out, as stated by the complainant who is present in person, this Court is of the view that the same could be compounded by this Court while exercising of the inherent powers under Section 482 of Cr.P.C., because the Court's exercising power under Section 482 Cr.P.C., are not circumscribed and limited to the offence which stands covered under Section 320 CrPC. In that eventuality, the offences for which the summoning order has been issued as against present applicant , though some of them are not compoundable, but, looking to the overall facts and circumstances of the case, particularly the interest of the complainant, when she is married and having a child, the proceedings of C482 application is dropped, and consequent thereto, the proceedings of the Criminal Case No. 1927 of 2021, State vs. Ravi Papnai, pending consideration before the Court of Additional C.J.M. Haldwani, Nainital would hereby stand quashed.

8. Apart from the imposition of the aforesaid penalty, the applicant is further directed as under:-

“i. That the applicant would be planting 5 trees in an area to be identified by the Horticulture Department of his District to which he belongs, at his own cost.

ii. The plantation of the trees would be made in the respective areas, from which he belongs, under the supervision of the Horticulture Department.

iii. It is only upon the submission of the certificate of the planting of the 5 trees to be issued by the competent authority of the Horticulture Department, which has to be submitted before the competent court ceased with the criminal proceedings, its then only the proceedings would be dropped, in compliance of the today's order passed in the present c482 applications.

iv. If the aforesaid compliance is not made within a period of one month from today, it will automatically result into the revival of the aforesaid criminal proceedings.

v. If at any stage, any Officer of the Horticulture Department is found to have issued a fraudulent certificate, he would be criminally dealt with in accordance with law.”

9. Owing to above, the matter is compounded and the C482 application would stand disposed of accordingly.

(Sharad Kumar Sharma, J.)
28.08.2023