

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Application No.3490 of 2014

- 1) Manish s/o Parasaram Jaiswal,
Age 45 years,
Occupation : Service As Manager,
in Hotel Mud Oven,
R/o 170, Shrinagar, Extension,
Flat No.206 Jalam Apartment,
Indore, Taluka and District
Indore, (M.P.).
- 2) Payal w/o Manish Jaiswal,
Age 50 years,
Occupation : Household,
R/o 170, Shrinagar, Extension,
Flat No.206 Jalam Apartment,
Indore, Taluka and District
Indore, (M.P.).

.. Applicants.

Versus

- 1) The State of Maharashtra.
- 2) The Police Station In charge,
Shahada Police Station,
Taluka Shahada,
District Nandurbar.
- 3) Harish s/o Hemkant Kulkarni,
Age 43 years,
Occupation : Service,
R/o 315 Vrandavan Nagar,
Near Shanimandir, Shahada,
Taluka Shahada,
District Nandurbar.

.. Respondents.

Shri. Amol N. Kakade, Advocate, for applicants.

Shri. S.B. Pulkundwar, Additional Public Prosecutor, for respondent Nos.1 and 2.

Shri. Amit S. Savale, Advocate, for respondent No.3.

**CORAM: T.V. NALAWADE
INDIRA K. JAIN, JJ.**

DATE : 24th APRIL 2015

JUDGMENT:

1) Rule, rule made returnable forthwith. By consent heard both the sides for final disposal.

2) The present proceeding is filed for quashing of the First Information Report of CR No.11/2012 registered in Shahada Police Station. The crime is registered for offences punishable under sections 420, 385, 387, 389, 504, 506, 34 of Indian Penal Code. Crime is registered on the basis of report given by present respondent No.3 Harish Kulkarni. He is working as a Clerk in the Court of Judicial Magistrate First Class. He has contended that his wife is in the business of hosiery and she makes purchases in Indore, Madhya Pradesh. He has contended that

applicant No.1 Manish Jaiswal was known to him and his wife due to business of his wife. He has contended that on one occasion applicant No.1 made representation that he would supply clothes by making delivery at the place of the wife of the complainant and there was no need for them to come to Indore time and again. It is contended that due to this representation the complainant paid Rs.20,000/- by depositing the amount in the account of applicant No.1 on 28-1-2011. It is contended that for many days no delivery was given and so the complainant made enquiry with applicant No.1. It is contended that on 12-4-2011 applicant No.1 deposited amount of Rs.10,000/- in the account of the complainant but after that he did not remain in contact and he did not pay the remaining amount to the complainant or his wife.

3) It is the case of the complainant that on 23-5-2011 when the complainant contacted applicant No.2, wife of applicant No.1 on a mobile phone and made enquiry, applicant No.2 promised him to return the money on phone. It is contended that after some time on mobile phone of the complainant a call was received from

unknown person and the said unknown person questioned the complainant as to why he had contacted applicant No.2. It is contended that said unknown person then started giving abuses and started using threatening language. It is contended that due to this phone call he gave report on 23-5-2011 to police and crime came to be registered for offences punishable under sections 504, 506 of the Indian Penal Code against unknown person in Shahada Police Station.

4) It is the case of the complainant that he realised that the applicants were behind the calls given by the unknown person and name of that unknown person was Rakesh Joshi. He has contended that Rakesh Joshi then started giving threatening calls and started saying that he would involve the complainant in false case in Madhya Pradesh. It is contended that on the basis of report given by Rakesh Joshi, crime was actually registered against the complainant. It is contended that he learnt that said Rakesh is an influential person. He has contended that threats were given that he will be involved in false case of rape. It is contended that when he

again contacted said Joshi as he wanted to settle the matter, said Joshi said that complainant needs to give him Rs. One lac for settling the dispute. After this call he approached police and gave report in question.

5) The crime is registered for offences punishable under sections 420, 385, 387, 389, 504, 506, 34 of Indian Penal Code. From the contents of FIR, which are quoted above, it can be said that there was no transaction between applicant No.2 and respondent No.3. But he has involved applicant No.2 in the incident. If at all there was some transaction with applicant No.1 that was of the year 2011 but respondent No.3 gave report on 19-1-2012. Admittedly one crime is registered against respondent No.3 in Madhya Pradesh on the basis of report given by said Joshi.

6) It appears that Rakesh Joshi had filed Criminal Application No.411/2013 for quashing of the FIR. This Court refused to interfere in the investigation. It can be said that there are direct allegations against Rakesh Joshi and they make out offence of extortion. It appears that

there are no such allegations against the applicants and the dispute is of civil nature. Present complainant was arrested and then report was given by present complainant.

7) In the past, on 28-11-2012, police had given "C" summary report but the report came to be rejected on the ground that statement of the complainant was not recorded. The complainant is working as Clerk in the Court of Judicial Magistrate First Class and the direction was given under section 156(3) of the Code of Criminal Procedure by the learned Judicial Magistrate, First Class, Shahada in a private complaint filed by present respondent No.3. In view of all these circumstances, this Court holds that it is no desirable to allow to prosecute the present applicants in the matter. The learned counsel for the respondent No.3 has placed reliance on some observations made Bombay High Court in the case reported as **2009(3) Mh.L.J. (Cri) 178 (Prashant Jhunjunwala v. Union Territory of Daman & Diu)**. This case is in respect of use of section 482 of the Code of Criminal Procedure by the Court in the case for offences

punishable under sections 420, 120-B etc. of the Indian Penal Code. The facts of each and every case are always different.

8) In view of nature of dispute and the aforesaid circumstances, this Court holds that the observations made by this Court in case cited supra are of no help to the present respondent No.3. The FIR needs to be quashed and set aside.

9) In the result, the application is allowed. The FIR in Crime No.11/2012 is quashed and set aside. Rule is made absolute in aforesaid terms.

10) As crime is registered against the respondent No.3 in a Court from Madhya Pradesh a copy of this order is to be sent to the Principal District and Sessions Judge, Nandurbar for doing the needful.

Sd/-
(INDIRA K. JAIN, J.)

Sd/-
(T.V. NALAWADE, J.)

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