

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 361 OF 2015

Parshuram Ganpat Nalawade	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr.Aniket Vagal, Advocate,for the applicant.
Mrs. G.P.Mulekar, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 19th August, 2015.

P.C.

Heard. Rule. Rule returnable forthwith with the consent of the parties.

2. The applicant herein has been charge-sheeted for the offences punishable under Sections 307, 384, 387 read with Section 34 of Indian Penal Code in Crime No.145 of 2013 registered at Kasturba Marg Police Station.

3(a). It is the case of the prosecution that on 28.5.2013, Rajaram Manjaokar lodged a report at the police station alleging therein that he is a

builder/developer. He is the proprietor of Amokh Enterprises. He has commenced with the work of developing property under the SRA Scheme. Initially, he was residing in the said slum area. According to the complainant, the applicant herein was residing in the same locality and hence the complainant was acquainted with the father of the present applicant. The applicant had been convicted for an offence punishable under Section 302 of IPC. The applicant had filed an appeal challenging the said judgment and order. In 2009, the applicant and his brother had visited the office of the complainant and prayed for extension of some financial help to engage an advocate to espouse his cause in the appeal. Hence, the complainant had given him Rs.10,000/-. When the applicant was on parole, the complainant had given him Rs. 3 lakhs to Rs.3.5 lakhs. The applicant happens to be a labour contractor and hence had also afforded help to the complainant.

(b) It is alleged that on 13.5.2013 at about 11 a.m., the applicant had visited the office of the complainant and was requesting the complainant to engaged some of the labours on his side. The complainant had refused to oblige. On the same day, the complainant had received a message from cellphone No.9036561545. It was almost a threatening message. He had received the phone calls also from the said cellphone. By

the said message, the complainant was asked to co-operate with Yusuf Bachkana of Chhota Rajan gang.

(c) On 14.5.2013, the complainant had again received a call from an unknown cellphone number threatening him of dire consequences in the eventuality that he did not pay the demanded amount. The caller had specifically informed the complainant that at that relevant time, he is in Karnataka and if necessary, the complainant may enquire about the antecedents of the caller. On 16.5.2013 also there was a threatening call.

(d) According to the complainant, on 17.5.2013, the present applicant had been to the office of the complainant. The complainant had given him a cheque of Rs.25,000/- to be drawn on Axis Bank. The applicant was sitting in the office and at that time, the complainant was talking to his wife on the cellphone and in the course of the conversation, the complainant had informed his wife that on 20.5.2013, he would be visiting the native village.

(e) On 18.5.2013, Yusuf Bachkana had again called the complainant. The complainant was constrained to file a report about the same to Kasturba Marg Police Station. On 20.5.2013, the complainant had again received a call from an unidentified cellphone number informing him that the caller was aware of the details of the projects undertaken by him.

There was a specific reference to the visit of the complainant to his native village. The complainant was surprised since, according to him, except his wife and himself nobody was aware that on 20th he was visiting his native village. It had immediately struck to him that on that day when he was conversing with his wife, the present applicant was seated opposite him in his office. On the same day, in the evening, he received another call asking him to pay an amount of Rs.2 lakhs to the person who would come to receive the said amount. He was threatened of dire consequences. On 27th and 28th also there was a demand. On 28.5.2013, when the complainant was on his way to his office, an unidentified person came on a motorcycle from the opposite direction. There was a pillion rider on the said motorcycle. They fired two bullets at his car. The rear glass was damaged. Immediately he received a phone call from the same caller who had asked him as to whether he has realized the consequence of refusing to pay the demanded amount. The complainant had rightly suspected that the present applicant was instrumental in extending the information about him to Yusuf Bachkana. A supplementary statement of the complainant was recorded on 30.5.2013 in which he has referred to the message by him from the same unidentified cellphone number, wherein he was warned that it was not a good gesture to collect the voice. He was asked to settle the issue and

withdraw the complaint filed at Kasturba Martg Police Station. The investigation was set in motion. After completion of investigation, charge-sheet was filed. The papers of investigation would reveal that the investigating agency has included the transcript of the conversation between the unidentified caller and the complainant.

4. The learned counsel for the applicant submits that the compilation of charge-sheet would in no way substantiate the allegations that the applicant is in no way involved in the said incident and, therefore, the applicant herein had filed an application seeking discharge. It is specifically submitted that the compilation of charge-sheet does not include the call details record even to remotely suggest that the present applicant is instrumental in the said incident. The learned Addl. Sessions Judge vide order dated 27.7.2015⁴ has rejected the application seeking discharge. The learned Sessions Judge has observed that it is the case of the prosecution that the applicant had extorted an amount of Rs.3.5 lakhs from time to time and that the record shows that there are allegations of extortion at the hands of the complainant. The learned counsel for the applicant vehemently submits that in fact it is stated in the FIR itself that the complainant had voluntarily extended financial help to the applicant to the tune of Rs.3.5

lakhs and therefore, according to the learned counsel, the financial assistance given by the complainant would not amount to extortion in any way and hence the applicant seeks discharge for the offence punishable under Section 384 of IPC.

5. Upon perusal of the papers of investigation and the compilation of charge sheet, it is clear that the FIR cannot be read in isolation as it is not an encyclopedia. It is in fact a report which would set investigation into motion. In the case at hand, the applicant is not just being prosecuted for seeking financial help from the complainant to the tune of Rs.3.5 lakhs, but the allegation, prima facie, appears that the applicant herein had joined hands with Yusuf Bachkana and was passing on the personal information of the complainant to Yusuf Backhana. The complainant has specifically alleged that at the time when he had informed his wife that he was going to his native place on 20th, the applicant was seated opposite him and, in all probabilities, it is only the applicant who had passed the said message to Yusuf Backhkana or else there was no reason for Yusuf Bachkana to know that complainant is leaving for his native village on 20th. It appears that the present applicant is helping Yusuf in his nefarious activities of extortion. Prima facie, there appears to be a nexus

between the principal accused and the present applicant and in view of this, the applicant does not deserve to be discharged. The contention raised by the learned counsel for the applicant can be disallowed in the course of recording of substantive evidence at the time of trial. An accused would be entitled to be discharged in a criminal case only when the compilation of charge sheet would indicate that no case is made out against the accused and that there is no sufficient material to frame charge against the accused. But in the present case, there appears to be sufficient material to frame charge against the accused for the offence alleged against him.

6. Hence, the application being sans merits, stands rejected.

7. It is made clear that the observations made above are restricted to deciding the application seeking discharge and the learned Sessions Judge shall not be influenced by the observations at the time of trial.

Application stands dismissed. Rule is discharged.

(SMT.SADHANA S.JADHAV, J.)