

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1372 OF 2014

Pramod Makharia		Petitioner
<i>Versus</i>		
Dhruvkumar Makharia & Ors.		Respondents

Mr. M.P. Rao with Ms. Reshma Kurla for the
Petitioner.

Mr. H.H. Nagi with Ms. Chaula Solanki, i/by M/s.
H.H. Nagi & Associates, for Respondent Nos.1
and 2.

Mrs. A.S. Pai, A.P.P., for Respondent No.3-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 23RD FEBRUARY 2016.

P.C. :

1. By this Petition, the Petitioner-Original Complainant is challenging the order dated 10th December 2013 passed by the Additional Sessions Judge, Greater Bombay, in Criminal Application No.621 of 2013, thereby quashing the process issued against Respondent Nos.1 and 2 by the learned Metropolitan Magistrate, 8th Esplanade Court, Mumbai in C.C. No.344/SW/2010 on 13th May 2013 for the offences punishable under Sections 385, 506(II) and 509 r/w. 34 of IPC.

2. Petitioner herein and Respondent Nos.1 and 2 are the brothers inter se. They had dispute relating to their ancestral property, in respect of which the matter was tried to be amicably resolved by way of filing the Consent Terms in the Hon'ble High Court and the Decree in terms of the Consent Terms was also drawn. Subsequent thereto, however, the matter between the parties was not resolved and, as a result, several cases in the form of execution and also of contempt proceedings were initiated.

3. The grievance of the Petitioner is that, in the second and third week of October 2010, he was constantly getting threats from unknown person, who was calling on the land-line phone installed in his office-cum-residential premises. The said unknown caller was informing that he was calling from Makcap Centre situated at Veera Desai Road, Andheri (West) and which belongs to Original Accused No.3 Dilip Kapoor and his associates. The said unknown person threatened the Petitioner that Petitioner has done blunder by stopping the work of Makcap Centre at the Oshiwara Plot and asked the Petitioner to contact Accused Nos.1 to 3 i.e. Respondent Nos.1 and 2 and Original Accused No.3 Dilip Kapoor and tender unconditional apology to them.

4. It is further grievance of the Petitioner that, on 1st November 2010,

he received a call on his mobile phone from the mobile phone No.8979890077 again from an unknown person informing him that criminal proceedings had been initiated under Sections 406 and 420 of IPC against the Petitioner at Jodhpur.

5. Moreover, he has also received one SMS on his Mobile No.9820084777 from Mobile No.9821379229 containing the portion of insulting the modesty of his daughter, if he does not revert back. It was sent by one Mr. Alkesh Ramwani. As per the grievance of the Petitioner, all these phone calls and SMS were made at the behest of Respondent Nos.1 and 2 herein and Accused No.3 Dilip Kapoor. Hence, the Petitioner approached the Trial Court for issuance of process against Respondent Nos.1 and 2 and co-accused.

6. On his complaint, the Trial Court initially called for a report of inquiry from the Police under Section 202 of Cr.P.C. The Senior P.I. of Colaba Police Station accordingly carried out detailed inquiry and submitted the report stating that, prima facie, no case is made out against Respondent Nos.1 and 2 herein and Accused No.3 Dilip Kapoor, as the filing of complaint appears to be an outcome of several disputes pending between the parties. The Police also made inquiry relating to SMS message

received on the mobile of the Petitioner allegedly insulting modesty of his daughter and found that it was sent by one Tailor and it had no connection with the Respondent Nos.1 and 2 herein.

7. On the receipt of this Report, the Petitioner filed a protest application and in view thereof, the Trial Court again perused the entire Report and after consideration of the complaint, documents and the statement of the Petitioner recorded by Police, being satisfied that there was, prima facie proof regarding commission of the offences punishable under Sections 385, 506(2) and 509 r/w. 34 of IPC, issued process against Respondent Nos.1 and 2 and Original Accused Nos.3 and 4.

8. Against the said order, Respondent Nos.1 and 2 herein preferred Revision Application before the Additional Sessions Court, Greater Bombay. While allowing the said Revision Application, the Revisional Court found that, prima facie no ingredients of any of the offences are made out and the complaint was the outcome of the civil disputes. Revisional Court accordingly set aside the order of issue process.

9. While challenging this order of the learned Sessions Judge, submission of learned counsel for the Petitioner is that, in complaint para

No.8 and 10, there are specific averments made by the Petitioner, which read as follows :-

“8. The said unknown person further threatened me to withdraw the action initiated against the development of the said Oshiwara Plot and if I fail in doing so in that case, Accused Nos.1, 2 and 3 will punish me by implicating me in false criminal case. He further threatened me saying that I should know what happens to young daughter who remains at home after the arrest of the father. I, therefore lodged complaint against the Accused Nos.1, 2 and 3 at Malbar Hill Police Station vide my letter dated 20/10/2010.”

10. Thereafter I replied the said SMS and I tried to contact on that number but the number was ringing and nobody was responding. On 17/11/2010, I received telephone call from the same mobile number 9821379229 and threatened me, not to execute warrant of attachment in respect of Consent Decree passed in the aforesaid Suit No.2723 of 2007 against the Accused Nos.1 to 3 abovenamed. The said Surrendra Pol informed me that he is doing these phone calls at the behest of Accused Nos.1, 2 and 3 abovenamed to restrain me to execute the said Warrant of Attachment. Therefore, I lodged

complaint at Colaba Police Station against Accused Nos.1, 2 and 3 vide my letter dated 18/11/2010, I have annexed the copy of letter dated 18/11/2010 with my complaint.”

10. Thus, according to learned counsel for the Petitioner, even the cursory glance of these averments make out prima facie ingredients of the offence of extortion. For easy reference, learned counsel for the Petitioner has also relied upon the ingredients of Section 385 of IPC to submit that, according to those ingredients, if any person is put in fear of injury in order to the committing the offence of extortion, the said person is liable to be punished with imprisonment. Here in the case, according to him, the phone calls were made only with a dishonest intention of putting the Petitioner in fear of injury to vacate the attachment. Hence, according to learned counsel for the Petitioner, the learned Sessions Judge has committed a gross illegality in quashing the process at the threshold itself, without giving an opportunity to the Petitioner to prove his case. Further, learned counsel for the Petitioner has submitted that the Trial Court has, after consideration of the complaint and also the report of the inquiry made under Section 202 of Cr.P.C., applied its mind and issued the process and it was wrong on the part of the Sessions Court to interfere in the discretion exercised by the Trial Court and quash the said process.

11. Per contra, learned counsel for Respondent Nos.1 and 2 has supported the order of the Sessions Court by pointing out that the report of inquiry made under Section 202 of Cr.P.C. was not making out any prima facie case against Respondent Nos.1 and 2 herein. The Trial Court has also not explained on which basis, it has issued the process against Respondent Nos.1 and 2. Further it is submitted that the present Criminal Case was clearly a counter-blast to the various orders passed against the Petitioner in the civil proceedings. Lastly, it is urged that the entire allegations of extortion are against some unknown persons. Even in the inquiry, the Police were unable to trace the call to any of the Respondent Nos.1 and 2. The SMS also was not found to be made at the behest or at the instance of the present Respondent Nos.1 and 2. Hence, according to learned counsel for Respondent Nos.1 and 2, no illegality can be found in the order of the Revisional Court so as to warrant interference therein.

12. It is an admitted fact that there are several civil disputes pending between the parties pending and some of them are already disposed of also. The matter relating to ancestral property was already amicably settled by way of Consent Decree passed by this Court, but thereafter also the litigation continued. Even the contempt proceedings were also

initiated by the Petitioner, which came to be disposed of by this Court. Point, therefore, to be stressed is that the relations between the parties are such that, though they are brothers inter se, it has given cause for filing of the civil and now criminal litigation.

13. However, without entering into that aspect, if one gives a cursory glance to the allegations made in para Nos.8 and 10 of the contents reproduced above, then it can be crystal clear that the Petitioner has received a phone call from one unknown person threatening him to withdraw the action initiated against the development of Oshiwara Plot. In respect of these phone calls, the Police have made inquiry under Section 202 of Cr.P.C. and came to the conclusion that they cannot connect these telephone calls to Respondent Nos.1 and 2.

14. As regards the SMS which was received on the mobile phone of the Petitioner, there is also the report of the inquiry stating that it was not connected to either of the Respondents, but it was sent by some third person and it has absolutely nothing to do with the dispute. The Revisional Court, in para No.15 of its order, has considered this aspect and has held that in the inquiry, it was found that the said mobile number is of one Alkesh Ramwani, who was having the shop of Fashion Designing and he

sends such SMS, if any clothes are given to him for designing. The detailed inquiry to that effect was made by the Police and on the basis thereof, the Police found that there was absolutely no substance in the complaint filed by the Petitioner.

15. Thus, when the Trial Court has again re-exercised its discretion in pursuance of the protest application filed by the Petitioner, it was not having any further or additional material for the purpose of issuing process against Respondent Nos.1 and 2. As earlier Trial Court had preferred to call for the report of the inquiry and if according to the Report of the inquiry under Section 202 of Cr.P.C., there was no merit in the case, in that situation, the Trial Court should have insisted on some further material to issue the process against Respondent Nos.1 and 2. It is pertinent to note that, when earlier the Trial Court did not find it fit to issue process without there being the report of the inquiry and when the report of the inquiry was not disclosing the ingredients of any of the offences alleged against Respondent Nos.1 and 2, it was patently illegal on the part of the Trial Court to issue process against Respondent Nos.1 and 2 on the basis of same averments made in the complaint.

16. The learned Revisional Court has considered all these aspects of

the case and thereafter quashed the process issued against Respondent Nos.1 and 2. On perusal of the order of the learned Sessions Judge, I do not find any patent illegality so as to warrant interference therein. This Writ Petition, therefore, holds no merit and hence stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]