

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

CRIMINAL APPLICATION NO. 3657 OF 2017

Shri. Jaywant Pannalal Chaudhari,
Age : 29 years, Occu. Service,
R/o. Chinchpada, Post Bodhagaon,
Tq. Sakri, Dist. Dhule.

... Applicant

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Nandurbar Police Station,
Nandurbar, District : Nandurbar.

2. Lalsing Deoman Suryawanshi,
Age : 47 years, Occu. Service,
R/o. Aambapur, Tq. & Dist. Nandurbar.

... Respondents

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Mr P. D. Bachate, Advocate for the applicant
MrJ. R.Shah, Advocate for respondent No. 2
Mr M. M. Nerlikar, APP for respondent/State
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**CORAM : S. S. SHINDE &
A. M. DHAVAL, JJ.**

RESERVED ON : 13.09.2017.
PRONOUNCED ON : __.09.2017.

JUDGMENT (PER A. M. DHAVAL, J.) :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties and taken up for final disposal at admission stage.

2. This is an application u/s 482 of the Cr.P.C. for quashing of FIR at C.R. No. 106/2017 registered on 27.04.2017 with Nandurbar Police Station, Nanduarbar for the offence punishable u/s 384 r/w 34 of the IPC.

3. The facts relevant may be stated in brief as follows :

Respondent No. 2-Lalsing Suryawanshi, resident of Aambapur is the original complainant. On 04.12.2016, marriage of Vaishali d/o Lalsing Suryawanshi was arranged with the applicant - Jaywant at Aambapur, Tq. & Dist. Nandurbar. The dates 29.01.2017 was fixed for engagement and 01.02.2017 for marriage. However, the groom and their relatives told respondent No. 2 - Lalsing that they had no enough money and if he would finance them for marriage expenses, the said amount would be returned to him at the time of marriage. Hence respondent No. 2 advanced an amount of Rs. 1,50,000/- to father of bride for meeting expenses of marriage, which would be refundable. Thereafter, Madhu Chaudhari, cousin of the applicant informed him that the bride - Vaishali had eloped with one boy. Respondent No. 2 told them that his daughter has not eloped and she was in the house only. Then respondent No. 2 was called at Chinchpada on 23.12.2016. He was informed by the

applicant - Jaywant, his father Pannalal Chaudhari, cousin Madhu Chaudhari, Kapil Gangadhar Suryawanshi, Uttam Raghunath Bhoje, Mohan Bhoje, Sadashiv Deoman Bhoje and Police Patil Bansilal Namde Gaikwad that, his daughter has committed wrong and the marriage would not be solemnised. Respondent No. 2 tried to convince them that she has not committed any wrong and they should come to his village and verify the fact but, he was told by the applicant, his family members and panch that he should pay Rs. 51,000/- to the Gaon Panchayat, lest they would defame his daughter. Respondent No. 2 was frightened and he was requesting them to reconsider but the applicant's cousin Madhu told him that his brother-in-law Jagan Dighya Gawit was a police at Shirpur and he was informed about all the facts about his daughter. Respondent No. 2 was frightened by these threats and told them that he had already paid Rs. 1,50,000/- and amount of Rs. 51,000/- be deducted from the said amount for payment to Gaon Panchayat. Then he was told that amount of Rs.1,50,000/- was already spent and he has nothing to do with that amount. He should pay separately Rs. 51,000/-. Due to fear, he immediately handed over Rs. 26,000/- which he had. Thereafter, when his sister-in-law's husband – Dattu Chaudhari from Kolhapur made inquiry with the applicant, the applicant told him that he liked Vaishali too much. The applicant won confidence of

informant's sister-in-law's husband Dattu Chaudhari and told him that Vaishali should be called at Kolhapur. Hence, Vaishali was sent along with Dattu Chaudhari to Kolhapur. Applicant - Jaywant promised to marry to Vaishali and roamed with her in Kolhapur. Then they had gone to Vikramgad Javhar where the applicant accompanied them and the photographs were also taken. He also gifted one Vivo mobile handset to Vaishali and promised to convince his parents for his marriage with Vaishali. However, after 2-3 days, Jaywant told him on phone that his brother-in-law Jagan Gawit had proposed one girl from his relation for him and, therefore, he was unable to marry to Vaishali as there was stiff resistance from his parents to marry to Vaishali. Then respondent No. 2 demanded Rs. 1,76,000/- back, but the applicant and his relatives declined to refund the said amount. Thus, the applicants and his relatives had extorted Rs. 1,76,000/-.

4. On the basis of such FIR, crime was registered and was investigated into.

5. The applicant seeks quashing of the FIR on the following grounds.

- (i) On bare reading of the FIR in true spirit, no offence is disclosed. The FIR is frivolous and imaginary.

- (ii) The FIR does not disclose the ingredients of Section 384 of the IPC.
 - (iii) No person was put in any fear nor there was any dishonest inducement to deliver any property to the applicant
 - (iv) The money paid for expenses of marriage cannot be termed as extortion.
6. Respondent No. 2 filed affidavit dt. 08.09.2017 and opposed the application. He claimed that the defence is scandalous. There was threat to defame his daughter so as to extort the money. He was threatened that if he would not pay Rs. 51,000/- to Gaon Panchayat, his daughter would be defamed. The facts disclose offence u/s 384 r/w 34 of IPC.
7. Learned advocate Shri Bachate advanced arguments as per the grounds raised in the application. Learned advocate Shri. J. R. Shah for respondent No. 2 and Shri. M. M. Nerlikar, learned APP for respondent No. 1/State, opposed the application. The investigating Officer has produced the papers of investigation. Advocate Bachate for the applicant informed us that the applicant is ready to refund the entire amount of Rs. 1,76,000/- without prejudice to the defence raised by him but, the complainant declined to agree for settlement hence, the arguments were heard.

8. The point for consideration with our finding thereon are as follows:

Sr. No.	Point	Finding
1	Whether the FIR deserves to be quashed.	In the negative.

9. The investigation revealed that, Vaishali did elope with one person who has given a statement that he was her classmate and knowing her for last 3 to 4 years. They were having love affair and at the relevant time they had eloped at various places. They had also gone to Kolhapur. As his father was known to vaishali's father, no action was taken against him.

10. Vaishali stated that, the applicant met her at the house of her maternal aunt at Kolhapur and promised her on 14.01.2017 that he would marry her notwithstanding the resistance from his parents. He also sought permission to allow him to take Vaishali with him for roaming and they roamed at various places in Kolhapur. Her maternal aunt's husband had provided clothes to the applicant. Thereafter also the applicant was in contact with her and he called her on 06.02.2016 at Vikramgadh. She along with her relatives met applicant at Vikramgadh and photographs were also taken. He tried

to force himself upon her but she refused to have sex with him till they would get married. She stated that he had openly demanded physical sex relations with her and he had gifted one mobile set to her. On his request, she had kept one bag of her articles in his room at Vikramgadhi as he had assured her that they were going to be married. Later on, he has declined to marry on the ground that his brother-in-law Jagan had proposed another girl for him. He had threatened her that she should not come in his way, lest he would not leave her alive. Vaishali has given a statement making additional allegations. She stated that the applicant told her that he would marry to her notwithstanding the resistance of his parents.

11. After considering the arguments of learned advocates and going through the papers, we find that amount of Rs. 1,50,000/- was advanced by the informant voluntarily for the purpose of marriage. But, when for whatever reason the marriage was broken, the applicant and his relatives were bound to refund the amount of Rs. 1,50,000/- as it was paid as refundable advance for marital expenses. It seems that, initially the applicant and his relatives were not ready to refund the amount which amounted to offence u/s 406 of IPC of criminal breach of trust. The wrongful retention of amount would amount to offence u/s 406 of IPC, however, before this court the

applicant has unconditionally offered to refund the said amount.

12. As far as amount of Rs. 26,000/- is concerned, the material on record discloses that it was a case of extortion. The informant was threatened that if he would not pay the amount to Gaon Panchayat, his daughter would be defamed and by such threat he was compelled to pay an amount of Rs. 26,000/-. There is no right to any body of panchas to collect any amount from the parties for settlement. If there is such custom to charge huge penalty for settlement, it amounts to extortion. Subsequent offer to refund the amount of Rs.26,000/- would be a mitigating circumstance. The payment will not nullify the offence committed by the applicant and his relatives. We, therefore find that, in respect of amount of Rs. 26,000/-, *prima facie* there is material to show the offence u/s 384 r/w 34 of IPC.

13. In the light of these facts, this is not a fit case for invoking the powers u/s 482 of the Cr.P.C. for quashing of the FIR. Hence, the application deserves to be rejected and is accordingly rejected. Rule is discharged.

[A. M. DHAVALE]
JUDGE

[S. S. SHINDE]
JUDGE