

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

CRIMINAL APPLICATION NO. 6166 OF 2016

Rameshwar S/o. Kaniram Jadhav
Age-44 years, Occ. Teacher,
R/o. Auditor Society, Harsool Parisar,
Aurangabad.

... **Applicant**

Versus

1. The State of Maharashtra
Through Police Station Harsool,
Tq. and Dist. Aurangabad.
2. Mohan S/o Pandurang Wankhede,
Age: 27 years, Occ: Agri. Service,
R/o Laxmi Colony, Ashok Nagar,
C/o Motiwalkar, Aurangabad.
Added address- Jaypur, Tq. Sengaon,
Dist. Hingoli

... **Respondents**

(Amended new address as per Court order dated 23.03.2017)

Mr. J.V. Deshpande, Advocate for the Applicant.
Mr. A.R. Borulkar, A.P.P. for the Respondent/State.
Mr. M.L. Wankhade, Advocate for Respondent no.2.

**CORAM : S.S. SHINDE &
MANGESH S. PATIL, JJ.
DATE : 04.10.2017**

JUDGMENT:- (Per Mangesh S. Patil J.)

. Rule. Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally.

2. This is an application under Section 482 of the Code of

Criminal Procedure seeking to quash and set aside the F.I.R. bearing No. I-155/2016 registered with Harsool Police Station, District Aurangabad on 17.10.2016 for the offence punishable under Section 384 and 506 of the Indian Penal Code.

3. The F.I.R., in sum and substance is to the effect that Respondent no.2 has been running Tuition classes for Spoken English in the name and style as Eon Vertex Spoken English Classes. A girl by name Payal was taking tuitions in that institute. During the oral test she requested the respondent no.2 to have it in his chamber since she was afraid of speaking in front of other students. According to her request, the test was conducted, there was some conversation and the girl left the class after giving thanks without any grievance. However, in the afternoon the father of the girl and the present applicant called upon the respondent no.2 and started alleging that he was harassing the girl. Since thereafter the applicant repeatedly called him and demanded an amount threatening that if the amount was not paid, they would lodge a complaint against him. Thus, since 16.10.2016 such demand was made and when the demand was raised to Rupees 50,000/-, the respondent no.2 lodged the F.I.R. on the basis of which, the offence was registered against the applicant as mentioned herein-above.

4. We have heard the learned Advocate for the applicant. He has relied upon the decision in the case of **Isaac Isanga Musumba and Ors. V/s. State of Maharashtra and Ors; (2014) 15 SCC 357** and in the case of **R.S. Nayak V/s. A.R. Antulay and Anr; AIR 1986 SC 2045**. The learned Advocate for the applicant, vehemently submitted that in the absence of actual proof of demand and the delivery of amount the ingredients of offence punishable under Section 384 could not be made out. Since the F.I.R. does not read about any amount having been paid by the respondent No.2 to the applicant, the necessary ingredient of the offence of extortion punishable under Section 384 of the Indian Penal Code is missing and the F.I.R. is liable to be quashed and set aside.

5. Per contra, the learned A.P.P. submitted that though in the original complaint lodged by respondent no.2 there is no reference to demand of any amount by him to the applicant, during the course of investigation, the Investigating Officer has found that the amount of Rs.10,000/- was in fact paid to the applicant by the respondent no.2 and specific reference can be found in careful reading of the F.I.R. Therefore, according to the learned A.P.P., the decisions cited on behalf of the applicant (supra) are not applicable to the facts and circumstances of the case. The learned A.P.P. also adverted our attention to the transcription

of the telephonic conversation that took place between the applicant and the respondent no.2 and the latter's wife which further corroborates the fact that the applicant did extort the amount.

6. We have gone through the original papers produced by the learned A.P.P. as well as the case laws cited by the learned Advocate for the applicant. A careful perusal of the F.I.R. Exhibit-A clearly shows that the allegations are not only restricted to hollow demand for money but in fact the amount was tendered by the respondent no.2 and received by the applicant, in presence of panchas. In view of such material, the applicant is not entitled to seek any benefit from the decisions of the Supreme Court cited (*supra*), since *prima facie* there is material to show that the applicant did receive the amount of Rs.10,000/-.

7. Besides, the call data record further *prima facie* corroborates the version of the respondent no.2 that the amount was extorted from him by the applicant making out the necessary ingredient for constituting the offence punishable under Section 384 of the Indian Penal Code.

8. A reference can be made to the up quoted decision in the case of **State of Haryana V. Bhajanlal (1992) AIR SC 604** and the guidelines laid down therein. By no stretch of imagination, the

allegations in the F.I.R. in the matter in hand can be said to be following short leave alone are absurd or manifest so as to invoke the powers under Section 482 of the Code of Criminal Procedure or for quashing it.

9. In view of such state of affairs and material on record, we are satisfied that the F.I.R. *prima facie* makes out the ingredients for constituting the offence of extortion punishable under Section 384 as well as for the offence punishable under Section 506 of the Indian Penal Code.

10. The application, therefore, is liable to be rejected and is accordingly rejected. Rule stands discharged accordingly.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]