IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.16 OF 2014

1.Dr.Arun Kumar Barthakur,
Age 58 years, R/o.Flat No.16-B,
Nilgiri Heights, S.B.Road, Pune-411016.

2. Basant Kumar Jain,
Age 63 years, R/o.Champa, Shreedharnagar,
Pune-411 044. Applicants

versus

1. The State of Maharashtra

2. Subhash Raghunath Jadhav,
R.o.Jotiba Niwas, Mumbai-Pune Road,
Tal.Vadgaonmaval, Dist. Pune.

3. Mahesh Sadanand Shetty,
R/o.Plot No.9, S.No.92/1, Mumbai-Pune Road,
Kamshet, Tal.Vadgaonmaval, Dist.Pune.

4. Virdhaval Vijay Sable,
R/o.Kharadi, Tal.Sangamner, Dist.Ahmednagar.

5. Mahendra Sampatrao Gadge Patil,
Office at 5, Sunrise Building, Ground Floor,
Chatushrungi, Senapati Bapat Road,
Pune. Respondents

Dr.Arun Kumar Barthakur, Applicant no.1, in person, for applicants.

Mr.Tejesh Dande for Respondent nos.2 to 5.

Mr.R.F.Shaikh, APP, for State.

CORAM : S.C.DHARMADHIKARI AND PRAKASH D. NAIK, JJ.

Date of Reserving the Judgment : 26th April 2017
Date of Pronouncing the Judgment : 05th June 2017

JUDGMENT - (Per : Prakash D. Naik, J.) :-

1. The Applicants have invoked inherent powers of this Court under Section 482 of Code of Criminal Procedure, 1973 (`Cr.P.C.') challenging the first information report (`FIR') against them with Chatursrungi Police Station, Pune vide C.R. No.254 of 2013. The impugned FIR is registered for offences punishable under Sections 386, 406, 420, 504 read with Section 34 of Indian Penal Code. The FIR was registered on 19th July 2013 at the instance of Respondent no.2.

2. Brief facts, as stated in the FIR, are as follows :

(a) The complainant and his associates had purchased the Flat No.3 situated in the property bearing City Survey No.2840, Gut No.18, Shivaji Nagar, Pune vide sale deed dated 25th April 2008;

(b) The earlier owners had executed a leave and license agreement dated 30th December 2002 with M/s.Anheena Engineering Private Limited for a period of four years. Applicant no.2 was a Director of the said licencee company. The license was thereafter extended from 21st January 2006 to 20th December 2006 with mutual consent and the same was registered;

(c) The complainant and the co-owners have been paying all taxes, water bill etc. to the Municipal Corporation being the owners of the property;

(d) Applicant no.2 was residing in the said flat as a director of the licensee company. However, he did not pay the rent to the previous owners as well as to the present owners. Applicant no.2 is not paying the rent amount as per leave and license agreement and the outstanding dues was increasing day by day. The complainant and the co-owners had a meeting with Applicant no.2 on 7th July 2013 and discussed the matter at length about handing over the possession of the flat and payment of outstanding rent amount. Applicant no.2 was informed that if he did not hand over the vacant possession of the flat and make the payment of the outstanding rent, appropriate civil and criminal action will be initiated against him. After a detailed discussion, Applicant no.2 agreed to hand over possession of the said flat on 7th July 2013. He was occupying the said premises as a trespasser;

(e) Applicant no.2 handed over possession of the flat premises to the owners in the presence of some persons. He sought few days time to make payment towards rent. After handing over the possession, Applicant no.2 left. In view of the relations with Applicant no.2, the parties did not execute possession receipt of the flat;

(f) On 8th July 2013, at about 10 a.m; one person tried to enter the building from the main gate of the premises where the flat is situated. The security guard stopped the said person from entering the premises. The said person disclosed his name as Barthakur and he indicated that he wants to visit Flat No.3. He argued with the security guard and abused him with filthy language. Thinking that Mr.Barthakur to be a person of criminal nature, one of the co-owners of the flat filed a complaint against him on 8th July 2013;

(g) On 8th July 2013, at about 9 to 9.30 a.m; when the complainant and his associates were having breakfast in the hotel at Aundh, Applicant no.2 called them and expressly desired to meet them. Accordingly, Applicant no.2 approached them at hotel. He insisted that the outstanding dues towards rent may be waived. He also warned that if rent is not waived, the complainant and his associates will have to face dire consequences. Applicant no.1 with the permission of Applicant no.2 went to the gate of the building where the flat is situated and abused the security guards with filthy language and also manhandled them;

(h) The complainant and his associates gathered information that Mr.Barthakur is an advocate by profession and Mr.B.K.Jain is in habit of taking illegal possession of others property, without paying rent, and thereby making profits by giving such property to third parties. Mr.Barthakur is helping Mr.B.K.Jain and extorting money by blackmailing them. Applicant no.2 has not paid the outstanding rent of Rs.16 lakhs in respect of subject flat. The accused demanded amount of Rs.25 lakhs failing which they threatened that they would forcibly enter the flat and by taking possession would let it on rent to others. They also threatened that they would confine the complainant and his associates in the flat and would kill them. They warned them not to play with them and demanded ransom. Applicant no.2 had withheld possession of the premises for a long period of time and committed breach of trust. The accused persons had entered into criminal conspiracy against the complainant and his associates with a view to extort money from them. The complainant and his associates apprehend that if the amount is not parted to the accused, they would be killed.

3. On the basis of aforesaid complaint, as stated above, the FIR was registered with Chatushrungi Police Station vide C.R.No.254 of 2017 at the instance of Respondent no.2.

4. Applicant no.1, who appeared in person, has advanced submissions in support of this application preferred on behalf of both the Applicants-accused. He submitted that registration of impugned FIR is an abuse of the process of law. No offence of whatsoever nature is, prima facie, made out against them in the FIR. He submitted that the version of the complainant is an after thought and concocted. He submitted that FIR has been lodged as a counter blast to the complaint lodged by the Applicant no.1. He further submitted that FIR was lodged to intimidate Applicant no.1 to succumb to the demands of the complainant and his associates. He placed reliance on several documents which are annexed to the petition to contend that the FIR is completely false and frivolous. He submitted that police machinery has misused the powers while registering the FIR and were acting in connivance with the complainant. According to the Applicants, Applicant no.1 had approached the police to lodge

the complaint first in point of time, however, the FIR lodged by the complainant was registered first which was followed by registration of FIR lodged at the instance of Applicant no.1. He submitted that the dispute is purely of civil in nature and with mala fide intentions, the recourse is taken to penal provisions by lodging a false complaint against them. It is further submitted that the FIR does not disclose ingredients of cheating, criminal breach of trust or extortion. According to the Applicants, taking the contents of the FIR as it is, no offence as alleged, are made out against the Applicants. The FIR is false and fabricated document which has been lodged out of vendetta. It is submitted that the complainant and his associates have in fact committed offences which are subject matter of the FIR lodged by Applicant no.1 vide C.R.No.255 of 2013 for offences punishable under Sections 455, 457, 380, 392, 379, 427, 341, 120-B of IPC and Section 193, 505 of IPC.

5. The Applicants further submitted that said premises are used by Applicant no.1 and he has been in possession since 2002. He has been paying the electricity bills etc. for the said premises and that his occupation of the premises and possession, is established by several documents and circumstances, which are enumerated in the present application. It is the case of Applicants that Applicant no.1 is occupying the premises since 2002. Applicant no.1 is a legal advisor of M/s.Anheena Engineering Private Limited. According to the Applicants, the owner of the premises Smt.Lilly Lima had executed a leave and license agreement with the said company. Applicant no.1 was purportedly inducted in the said flat by the said company. According to the Applicants, after expiry of the leave and license

agreement, Applicant no.1 continued to occupy the said premises which has been used as an office by him, as he was carrying on legal profession. According to Applicant no.1, the agreement with the company had expired on 21st December 2016 and he had oral agreement with the owner of the premises from 22nd December 2016. It is further stated that the owner had collected rent in cash from Applicant no.1. Thereafter the Applicant no.1 agreed to purchase the said flat premises from the aforesaid owner and she had accepted the advance consideration in cash. It is further contended that the owner fell ill and the sale deed could not be executed. The complainant and his associates are relying upon a forged sale deed. They had approached the Applicant no.1 and intimated him that they had purchased the said flat. Applicant no.1 was being threatened and, therefore, he had lodged a complaint with police but no action was initiated by police. According to Applicant no.1, on 8th July 2013, the articles belonging to Applicant no.1 were removed from the said office premises. He had lodged a complaint with police on 8th July 2013 but no action was taken by police. He also lodged a complaint against police for their inaction. It is also contended by the Applicants that receipt for payment issued by Smt.Lilly Lima in favour of Applicant no.1 as well as other important documents were stolen at the instance of Respondents.

6. The Applicant no.1 placed reliance upon following decisions :

(i) Isaac Isanga Musumba and others Vs. State of Maharashtra and others - **(2014)15-SCC-357**;

(ii) Dhananjay @ Dhananjay Kumar Singh Vs. State of Bihar and another - **(2007)14-SCC-768**;

(iii) Mohammed Ibrahim and others Vs. State of Bihar and another - **(2009)8-SCC-751**.

7. The decision in case of **Dhananjay @ Dhananjay Kumar Singh (supra)** was in respect to quashing of the criminal proceedings for offences under Sections 323, 384, 504 read with Section 34 of IPC. In the said decision, the Hon'ble Supreme Court of India has made observations with regard to the ingredients to constitute an offence under Section 383 of IPC. In the said decision it was held that to constitute an offence under Section 383 of IPC, the accused must put any person in fear of injury to that person or any other person and putting such person in such fear must be intentional and the accused must induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security etc.. According to the Applicants, in the light of the ratio laid down in the said decision, no offence under the said provision is made out in the impugned FIR.

8. In the case of **Issac Isanga Musumba and others (supra)**, the Hon'ble Supreme Court of India has reiterated the same requirements for constituting an offence under Section 383 of IPC. In the decision in **Mohammed Ibrahim and others (supra)** relied upon by the Applicants, the Hon'ble Supreme Court of India was considering the ingredients to constitute the offence of cheating. It was observed that to constitute the said offence, there should not only be cheating but as a consequence of such cheating the accused should have dishonestly induced the person deceived to deliver any

property. It was further observed that in the absence of ingredients of cheating as stated in Section 415 of IPC, it cannot be said that there was an offence of cheating. The Applicants, therefore, submitted that the FIR does not make out alleged offences and by exercising the inherent powers under Section 482 of Cr.P.C, the impugned FIR may be quashed.

9. Learned APP submitted that the FIR prima facie makes out a case for investigation and police machinery be permitted to file the charge sheet on completion of investigation. He submitted that the documents annexed to the application by the Applicants in support of the contentions, are in the form of defence of Applicants-accused which cannot be looked into at this stage.

10. The Respondent no.2 has filed affidavit-in-reply in this application and opposed the prayer for quashing the FIR. In the said reply it is stated that the facts narrated in the application are factually incorrect and presented in twisted form by the Applicants. The interpretation and the story mooted by the Applicants in the application are false and incorrect. It is further stated that from the contents of FIR, it is crystal clear that the accused-Applicants have taken undue advantage of the trust shown by the complainant and committed offences punishable under Sections 420, 406, 386, 504 read with Section 34 of IPC. The accused wanted the complainant and the co-owners of the subject premises to waive the huge arrears of rent and on refusal to do so, a false FIR was registered against them. The accused then resorted to demanding ransom from the complainants. It is further stated that Accused no.2 deals in real

estate and in connivance with Applicant no.1. The modus operandi of the accused is such that they never leave any evidence behind while committing offence. It is further stated that considering the peculiar facts and circumstances of the case, investigation by police is extremely necessary. It would be in the interest of justice to allow the police to investigate the matter thoroughly and in the event of finding the FIR as false, the police have an option of dropping the proceedings. However, allowing present application without allowing the police to investigate, would result in miscarriage of justice. The FIR essentially discloses offence against the accused. Applicant no.1 was working as a legal advisor to the aforesaid company of which Accused no.2 was a director. The offence committed by the accused are of serious nature and the same needs to be investigated by police machinery. It is also stated that the accused are in habit of blackmailing layman who have meager legal knowledge and with their legal expertise.

11. We have perused the contents of the application, the documents annexed to the application and affidavit-in-reply filed by Respondent no.2. We have also considered the judicial pronouncements relied upon by the Applicants in support of their submissions.

12. The inherent powers under Section 482 of Cr.P.C. can be exercised by this Court in the event it is noticed that there is an abuse of process of law. The Hon'ble Supreme Court of India in several decisions has held that power under Section 482 of Cr.P.C. has to be exercised with circumspection and sparingly. After

registration of FIR the law is set into motion which is followed by investigation conducted by police. In the decision of **State of Harayana and others Vs. Ch. Bhajan Lal and others (AIR-1992-SC-604)**, which is followed in several cases time and again, it has been categorically held that in the circumstances reflected in paragraph 108 of the said decision, the Court can quash and set aside the complaint or the FIR in exercise of powers under Section 482 of Cr.P.C. However, in paragraph 109 of the said decision, it is observed as follows :

> "*109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.*"

13. From the contents of the FIR it is evident that the case of the complainant is that both the accused have acted in connivance with each other. Accused no.2 was occupying the premises as a licensee, and continued so by the complainant and his associates, who had purchased the said flat. In spite of assurances, Applicant no.2 did not pay the arrears of rent and continued to be in possession of the premises. It is the further case of complainant that at least Accused no.2 handed over the possession and refused to clear the dues towards rent. On the contrary, he threatened the owners of the dire consequences and at his instance the Applicant no.1 tried to enter

into the premises and had indulged in act of assaulting and threatening the security guard posted at the premises. In the FIR it is further stated that with a view to avoid payment of arrears, both the Applicants-accused connived with each other and on the contrary threatened the complainant for ransom. It is further stated in the FIR that Applicant no.1 is an advocate by profession and Applicant no.2 is in habit of illegally taking possession of the property and without paying rent, he makes profit by giving such property to third parties. Applicant no.1 is helping Applicant no.2 and they are blackmailing the people. The complainant and the co-owners had taken possession of the flat from Applicant no.2, who failed to pay the rental arrears and both Applicants-accused in connivance with each other demanded an amount of Rs.25 lakhs and by threatening that they would forcibly enter the flat and take its possession. The accused also threatened that if the ransom amount is not paid, the victims will be killed by confining them in the flat. The offence committed by Applicants-accused is by conniving with each other.

14. In view of these serious allegations the police machinery must be afforded an opportunity to file a report against the accused. It would not be proper to quash the impugned FIR in the light of allegations made therein. We are conscious of the fact that in several decisions, some of which are relied upon by the Applicants, the Hon'ble Supreme Court of India has discussed the requisite ingredients to constitute offence of cheating and extortion. In the present case, it can be prima facie seen that Applicant no.2 had continued in possession without paying rent and to avoid payment of rent, he connived with Applicant no.1 and threatened the

complainant and others. It is also alleged that Applicant no.1 tried to enter into the premises and while doing so, assaulted and abused the security guards posted at the premises. We have also taken note of the nature of allegation made against first Applicant and with regard to modus operandi allegedly adopted by the Applicants. It is not possible to scan the FIR at this stage and to determine what offence is made out. While filing the charge sheet, the investigating machinery has a prerogative to bring on record appropriate evidence, and file charge sheet for appropriate offences. Even after filing the charge sheet, the Applicants-accused have options of resorting to the remedies available in law to challenge the prosecution launched against them.

15. The grounds raised by the Applicants in this application are in the form of defence. The documents relied upon by the Applicants are also in the form of defence of the accused. The FIR cannot be overlooked by relying upon the contentions of the Applicants-accused and the documents relied upon by them. Applicant no.1 has attempted to make out a case that he was in possession of the premises for a long period of time and that he has been dispossessed from the said premises. He also contended that he had an oral agreement to continue to be the licensee of the premises and that he had agreed to purchase the premises from the owner. It is also contended that advance consideration was paid to the owner of the premises. However, the receipts towards payment were stolen by the Respondents while dispossessing the Applicants from the premises. According to Applicant no.1, he was using the said premises as his office for a long period of time and that he has lodged the FIR

against the Respondents. It would not be possible to accept the contentions of the Applicants as truth at this stage.

16. We are of the opinion that at this stage it would not be possible to adjudicate on veracity of FIR and analyse the contents of FIR vis-a-vis the contentions of the Applicants. In fact, any observations about veracity of the defence raised by the Applicants, would be prejudicial to the interests of Applicants as there are remedies available in law to the Applicants to challenge the proceedings even after filing of the charge sheet.

17. In view of above, we are not inclined to entertain this application. Hence, we pass following order :

ORDER

(a) Criminal Application No.16 of 2014 stands rejected;

(b) Interim order dated 11th November 2014 stands vacated forthwith;

(c) No order as to costs.

(d) At this stage, Mr.Barthakur appearing in person seeks continuation of the ad-interim order dated 25th November, 2014. This request is opposed by the learned advocate holding for Mr. Dande.

(e) Having heard both sides on this point and finding that the criminal application has been dismissed, it will not be proper to stay the investigation. However, if the investigations are allowed to be continued, we would expect the prosecution not to file the charge-sheet for a period of six weeks from today.

(PRAKASH D. NAIK, J.) (S.C.DHARMADHIKARI, J.)

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