

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO.389 OF 2017
WITH
CRIMINAL APPLICATION NO.363 OF 2017 IN CRA 389/2017**

Rohit @ Rohidas Tukarama Kalekar .. Applicant.

Vs.

State of Maharashtra .. Respondents.

Mr.Vivek B. Shivarkar for the Applicant.

MrS.V. Gavand APP .for the Respondent.

CORAM : A. K. MENON, J.

DATED : 2ND AUGUST, 2017

P.C. :

1. By this revision application the applicant seeks to challenge the order dated 17th June, 2017 whereby the appeal challenging the order of conviction by the trial Court in R.C.C. No.269 of 1999 on 28th February, 2002 was dismissed.

2. The facts in brief are as under : That there was theft in the house of the complainant in relation to which a complaint was lodged on or about 9th July, 1999 at about 17.15 hours. The accused had allegedly reacted to the complaint by threatening the complainant over the phone that he would kill the family members of the complainant if the complainant did not pay a sum of Rs.1,00,000/-. This threat was informed to the police. The police asked the complainant to agree to the demand. On receipt of the next call the complainant agreed to meet the accused with the money at spot near Aryan Gas Agency. The

complainant asked the accused how could he identify him. The accused asked the complainant to tie red coloured handkerchief on his hand. Accordingly, the complainant carried a plastic bag with paper to create an impression that he was carrying the cash and waited near the agreed spot. When the accused arrived there and met the complainant the police apprehended the accused. The accused was since convicted and sentenced by both the Courts below.

3. Mr. Shivarkar, learned counsel for the applicant has assailed the orders on the basis that there is an iota of evidence that accused is the very person who was involved in the offence and that he had specifically threatened the complainant and demanded a sum of Rs.1,00,000/-. The revision is opposed by the learned APP. In the course of opposing the revision Mr. Gavand, learned APP pointed out that the judgment delivered on 28th February, 2002 by JMFC Pune in paragraph 16 stated that all family members of P.W.1 and P.W.4 had identified the accused and confirmed that he received plastic bag at the telephone booth. The JMFC had found that all ingredients of Section 386 were established in the facts of the case.

4. I have perused the impugned order and heard learned counsel for the parties. The record indicates that the police had called two panchas who arrived at the pre-arranged spot. The accused had lifted the bag and was leaving with plastic bag containing four bundles. The impugned order also records the fact that the accused had given a statement before the panchas and even shown the telephone booth from where he called the complainant Sukhatme. The statement of employee of the STD booth was recorded who confirmed that the accused came on 9th July, 2009 to make the call. The plea of the applicant that

requirement of Section 386 had not been made out is difficult to accept in the facts and circumstances of the case. In fact there was no reason for the accused to be at the specified location to collect the packet if he had nothing to do with the offence. The contention of Mr. Shivarkar that the prosecution's version that the accused had asked the complainant to tie a red handkerchief on his hand cannot be believed because if the accused had himself gone to commit theft, he would not have found it difficult to identify the complainant if not acceptable. This contention has no merit since there was no reason for the accused to approach the complainant in the first place and secondly collect plastic bag from the complainant. Mr. Shivarkar's contention that no offence has been made out under Section 386 cannot be accepted in view of concurrent findings. It is also not possible to accept the contention that it was a coincidence.

5. In the circumstances I find nothing in the orders of the Courts below wherein it can be stated is erroneous or perverse in any manner. In the circumstances the revision fails. Hence, I pass the following order :

- (a) Revision Application is dismissed.
- (b) In view of dismissal of revision application, Criminal Application No.363 of 2017 is also dismissed.

(A.K. MENON, J.)