

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1927 OF 2018

- 1] Balasaheb Gangaram Shinde,
Age : 29 years, Occu. : Agri.
- 2] Kashinath Gangaram Shinde,
Age : 48 years, Occu. : Agri.
- 3] Rama Gangaram Shinde,
Age : 50 years, Occu. Labourer,
- 4] Hanumant Gangaram Shinde,
Age : 45 years, Occu. Labourer,

No. 1 to 4 R/o Chanda, Tq. Newasa,
District : Ahmednagar.
- 5] Rama Sahebrao Fulmali,
Age : 48 years, Occu. Labourer,
R/o Ozar, Tq. Narayangaon,
District : Pune.
- 6] Subhash Hanumant Fulmali,
Age : 30 years, Occu. Labourer,
R/o Shingnapur, Tq. Newasa,
District : Aurangabad.
- 7] Gangaram Tukaram Fulmali,
Age : 55 years, Occu. Labourer,
R/o Bhenda, Tq. Newasa,
District : Ahmednagar.
- 8] Ganga Gangaram Gundale,
Age : 42 years, Occu. Labourer,
R/o Daithan, Tq. Shrigonda,
District : Ahmednagar.
- 9] Tatyaba Shivram Fulmali,
Age : 60 years, Occu. Nil,
R/o Dhorjalgaon, Tq. Gangapur,
District : Aurangabad.

- 10] Uttam Hanumanta Fulmali,
Age : 44 years, Occu. Labourer,
R/o Jeur Kukana,
Tq. Newasa, Dist. Ahmednagar. ...Applicants

Versus

- 1] The State of Maharashtra,
2] The Investigation Officer,
Shirdi Police Station, Ahmednagar.
3] Ranjana Balasaheb Shinde,
Age : 27 years, Occu. Agril.
R/o Savli Vihir, Tq. Rahata,
District : Ahmednagar. ...Respondents

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Mr. D. R. Jayabhar, Advocate for Applicants.

Mr. A. A. Jagatkar, A. P. P. for Respondent No. 1 &
2.

Ms. S. M. Zaware, Advocate for Respondent No. 3.

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**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 12-12-2018.

JUDGMENT : (Per Smt. Vibha Kankanwadi, J.)

01. Rule. Rule made returnable forthwith. By
consent, heard finally.

02. Present application has been filed by the

original accused persons invoking the powers of this Court under Section 482 of Cr. P. C. for quashing and setting aside the F. I. R. bearing No. I 12 of 2017 registered with Shirdi Police Station, Dist. Ahmednagar for the offences punishable under Sections 363, 383, 323, 504 and 506 read with 34 of I. P. C.

03. The applicant No. 1 is the husband of respondent No. 3. Applicant Nos. 2, 3 and 4 are his brothers. Applicant Nos. 5 and 6 are the relatives of the applicant No. 1 and also the panchas of the community. Applicant No. 7 to 10 are also the panchas.

04. Applicants have contended that due to the differences between the applicant No. 1 and respondent No. 3, she left the matrimonial home at Chanda, Tq. Newasa, Dist. Ahmednagar. She is residing with her father at Savli Vihir, Tq. Rahata, Dist. Ahmednagar. Marriage Petition No. 72 of 2017 is pending before Civil Judge Senior Division at Newasa filed under Section 13 of Hindu Marriage Act. The dispute in respect of the custody of their son Anil is also pending. He was in his custody throughout and Anil is taking education at Chanda. The respondent No. 3 has made false allegations that Anil has been kidnapped from her custody by the applicant Nos. 1 to

4 and thereafter when she and her father tried to resolve the dispute from the panchas i.e. from Jat Panchayat, the applicant Nos. 5 to 10 who are the panchas demanded the illegal amount / tried to extort amount of Rs. 2,00,000/-. The applicants have stated that they have been falsely implicated, when the incident of kidnap had not at all taken place. There was no question of requesting the panchas from the Jat Panchayat to resolve the dispute. They prayed for quashment of the report.

05. Heard learned Advocate Mr. D. R. Jayabhar for applicants, learned A. P. P. Mr. A. A. Jagatkar for the respondent Nos. 1 and 2 and Ms. S. M. Zaware for respondent No. 3. Perused the documents on record as well as the police papers of investigation. All of them have argued in support of their respective contentions.

06. It is necessary to see what are the allegations in the F. I. R. in nutshell. The informant alleges that there are disputes between her and her husband. Accused Nos. 1 to 11 had arranged for Jat Panchayat on 9.8.2016 at village Ghodegaon, Tq. Newasa. It was attended by the informant, her sister Manisha, father, mother and other relatives. Informant and her relatives requested the panchas that they should resolve for the dispute between

informant and accused No. 1. At that time, panchas No. 6 to 11 told informant and her parents that they should give amount of Rs. 2,00,000/-. Further, threat was given that if the said amount is not given then there would be social boycott on them. Informant and her relatives informed accused Nos. 6 to 11 that they are labours and they do not have that much financial capacity to give the amount. But, since the dispute relates to the girl it should be resolved. But, at that time, accused Nos. 6 to 11 stood firm on their illegal demand. When informant and her relatives made request to accused Nos. 1 to 5 that she should be allowed to co-habit with the husband; at that time, accused No. 1 told that she should give the amount of Rs. 2,00,000/- as demanded by the panchas and in case of failure to give, she should give divorce to him. Accused also told her that she should take back the maintenance proceedings and other cases against the accused No. 1. Threat was also given that accused No. 1 will perform second marriage and nobody will put in harmful position to them. Informant and her relatives went back in fear to Savli Vihir. It is further alleged that thereafter accused Nos. 1 to 5 went to Savli Vihir on 23.8.2016 and started demanding the amount of Rs. 2,00,000/- demanded by accused Nos. 6 to 11. Again her

parents refused on the ground of inability. Thereafter, at about 11 to 11.30 PM the accused Nos. 1 to 5 forcibly took Anil - younger son of informant and took him in car. When she had resisted, at that time, she was assaulted. She went to Shirdi Police Station on 24.8.2016, but, her F. I. R. was not taken on the ground that it is not within his jurisdiction and then she went to Dy. S. P. and again went to Superintendent of Police Ahmednagar on 29.8.2016. When no cognizance was taken she filed a private complaint before J. M. F. C. and thereafter, it appears that the said complaint was sent for investigation under Section 156(3) of Cr. P. C. on the basis of which the F. I. R. came to be registered.

07. The first and the foremost fact that is required to be noted is that in the F. I. R. there is absolutely no whisper as to since when the informant is not residing at her matrimonial home. The said date or period is required to be gathered from her own application under Domestic Violence Act i. e. Misc. Cri. Application No. 580 of 2015 before J. M. F. C., Rahata. It is stated that she was driven out of the house in December 2014 and according to her, son Anil was kidnapped on 23.8.2016 from Savli Vihir. Perusal of the bona fide certificate of Anil issued by Head Master, Zilla Parishad School, Samtanagar, Chanda,

Tq. Newasa, Dist. Ahmednagar would show that in 2014-2015 Anil was taking education with that school in 4th standard. Thereafter, further bona fide certificate issued by the same authority shows that Anil has taken education at Chanda for the academic year 2015-2016 in 5th standard and then again the report card for the year 2016-2017 would show that he was taking education with the Jawahar Madhyamik Vidyalaya, Chanda for the academic year 6th standard. Further, report card shows that even today he is taking education with the same school for 7th standard. In spite of these documents respondent No. 2 has not produced anything on record to show that from 2014 to 23.8.2016 Anil was residing with her at Savli Vihir. It clearly goes to show that Anil was with his father, though, the mother claims that she is residing with her father since 2014. There was no question of kidnapping taking place on 23.8.2016. It will not be out of place to mention here that we do not want to go into the other aspect about who can be said to be the legal guardian and whether taking the ward by the guardian amounts to kidnapping or not. On the basis of the documents on record it appears that Anil was continuously with his father and on simple proposition that when he was with father there is no question of kidnapping.

08. Now, as regards the alleged illegal demand of Rs. 2,00,000/- is concerned, the learned Advocate appearing for the applicant has relied on the decision in **Isaac Isanga Musumba & Ors. V/s State of Maharashtra & Ors., (Writ Petition (Crl.) Nos. 80 of 2013 decided by Hon'ble Apex Court on 19.6.2013)**, wherein it has been observed that unless property is delivered to the accused person pursuant to the threat, no offence of extortion is made out. The F. I. R. from the offence under Section 384 could not have been registered by the police. No doubt, here informant does not say that amount as allegedly demanded by accused Nos. 6 to 11 was ever paid to them. In that case, at the most it can be taken as an "attempt". But, again it is required to be seen as to whether such kind of incident might have taken place or not. The learned A. P. P. has relied on the statements of witnesses recorded by Police. It appears that mainly those witnesses whose statements have been recorded are the relatives of the informant. The learned A. P. P. also showed photo copy of photo showing that the Jat Panchayat had gathered. However, those photographs do not expressly show it was Jat Panchayat. Only gathering of people can be seen in the photograph. Our attention is drawn to statement of one Shivaji Shankar Kundale who is the

neighbour of father of informant. Perusal of his statement would show that he is supporting the informant in saying that Anil is residing with informant. As aforesaid that is incorrect statement. There are documents on record to show that Anil is residing with his father. Secondly, the statement of said Shivaji Kundale would show that the Jat Panchayat had gathered in front of house of father of informant. Perusal of the F. I. R. would show that according to her accused Nos. 6 to 11 had arranged the Jat Panchayat at Ghodegaon, Tq. Newasa. Shivaji Kundale does not say that he had gone to Ghodegaon and at that place he had seen the Jat Panchayat. The statement of this witness can not be considered for the third reason that he was not able to understand the language of the said community. According to him those people who had gathered were communicating with each other in loud voice. After all of them disbursed, Sahebrao Aher i.e. the father of informant translated him in Marathi what had happened. That means whatever conversation that had taken place, even if for the sake of arguments it is accepted that it was in his presence, he was not able to understand that language. Under such circumstance, there appears to be only the statements of the near relatives of informant to support her contention. The FIR appears to

have been filed with ulterior motive. Possibility of her request to applicant No. 6 to 11 to resolve her dispute with her husband can not be ruled out, but that can not be stretched too far. Applicants have shown that no such incident as narrated in the FIR had taken place. With all this background it would be a futile exercise to ask all the applicants to face the trial. Case, is made out to use the discretionary powers of this Court under Section 482 of Cr. P. C. within the parameters laid down in **State of Haryana and Ors. V/s Bhajanlal and Ors., [1992 Supplement -1 Supreme Court Cases, 335]**.

09. Hence, following order;

ORDER

(i)The application is allowed.

(ii)Relief is granted in terms of prayer clause

"D".

(iii)Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALAWADE]

JUDGE

Dahibhate/-