

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 265 of 2011

1. Kamal Khan, son of Kutub Khan, aged about 32 years, R/o Subhash Nagar, Thana Moudha Para, District Raipur, CG
2. Anwar Ali son of Farooq Ali, aged about 29 years, R/o Subhash Nagar, Thana Moudha Para, District Raipur, CG

--- Applicants

Versus

1. State of Chhattisgarh through District Magistrate, Raipur, CG

--- Respondent

For Applicants	-	Smt. Smita Jha, Advocate.
For Respondent/State	-	Shri Aman Kesarwani, PL

Order on Board by Hon'ble (Smt.) Vimla Singh Kapoor, J.

28.03.2019:

FIR (Ex.P-1) lodged by Dr. Satyendra Kumar Ojha (hereinafter referred to as “complainant”) who has been examined as PW-1 discloses that on 8.7.2010 at about 11.30 PM someone had knocked at the door of his house and on being opened by him two persons forcibly came inside. It is alleged that on being asked by the complainant and his wife as to who they were, they introduced themselves to be from the Crime Branch, Raipur and accusing the complainant of using his Santro car for commission of theft they threatened him of accompanying them to the police station to undergo photography by the press people which would bring social ignominy to him and make him lose his job also. It is further alleged that when the complainant got frightened, they raised the

demand of Rs. 1,50,000/- for settling the matter through their superior officer and when he showed his inability to pay that much amount, they grabbed the key and the documents pertaining to the Santro car of the complainant and thereafter started pressing their demand on phone and threatening of spoiling his career. Having lost his nerve, complainant ultimately apprised of all this to Dr. Prahlad Jairani (PW-6) – the Director of the institution where complainant was employed as Assistant Professor and then proceeded to lodge the report Ex. P-1 against two persons, on the basis of which offences under Sections 456, 384, 327, 420, 34 IPC were registered. After completion of investigation, charge-sheet was filed against the accused/applicants under sections 384, 327, 420, 120-B, 34, 457, 170 and 419 IPC followed by framing of charge accordingly and commencement of trial.

2. Learned Magistrate vide judgment dated 31.1.2011 passed in Criminal Case No. 1239/2010 convicted the accused/applicants and one Mohd. Altaf under Sections 457, 384, 419, 420, 170 and 120-B IPC and imposed the various sentences going up to the RI for 3 years with fine. However, in appeal only the applicants herein have been found guilty but the other one namely Mohd. Altaf has been acquitted of the charges levelled against them vide judgment under challenge in this revision petition dated 26.4.2011 passed in Criminal Appeal No. 26/2011.

3. Counsel for the applicants submits that the conviction of the accused/applicants being contrary to the evidence of the witnesses is liable to be set aside. She submits that when on the same set of

evidence one of the accused has been acquitted by the lower Appellate court, these applicants also deserve the same treatment. State counsel however supports the judgment impugned as a whole.

4. From the evidence of PW-1 and PW-2 it is apparent that on the date of incident in the night hours the accused/applicants had forcibly entered their house and conspired to extort money amounting to Rs. 1,50,000/- by saying that he was using his car for commission of theft. Their evidence further shows that when the complainant expressed his inability of paying such a huge amount, they took the key and documents of his Santro car and started threatening him on phone of spoiling his career. Evidence of Dr. Prahlad Jairani (PW-6) also shows that on the date of incident in the dead of night the complainant had informed him on phone about the act of the accused/applicants that they had forcibly entered his house and accused him of using his car for committing theft. A.S. Ansari (PW-8) has also supported the case of the prosecution stating that while the accused/applicants were running away taking money, he nabbed them and seized the motorcycle and the mobile phone with SIM card used in the commission of offence under Ex. P-6. Bundles of currency notes of 500 denomination were also seized from the accused/applicants under Ex. P-7 on which short signature of complainant was also there. This also finds support from the witness namely Naresh (PW-4). Further, on the memorandum of accused Anwar Ali the key and the documents pertaining to the car were also seized from the house of acquitted accused Mohd. Altaf. Apart from this, in the test identification

parade, PW-1 and PW-2 had identified the accused/applicants by putting their hands on their head which is clear from documents of Ex. P-4 and P-5. Though seizure witness Dr. Manish (PW-5) has been declared hostile, while answering the leading question he has admitted that police had made seizure from the house of the acquitted accused. Thus, the evidence on record clearly establishes the involvement of the accused/applicants in the crime in question and being so the Courts below appear to be justified in holding them guilty as described above. Conviction of the accused/applicants is thus maintained.

5. Now turning to the sentence part, considering the fact that the incident had taken place in the year 2010 and that the accused/applicants have already remained in jail for about seven months, this Court deems it just and proper and also in the interest of justice to reduce the sentence imposed on them to the period already undergone. In lieu thereof, each of the applicants is now directed to pay a fine of Rs. 6,000/- instead of 3,000/- as imposed by the Court below. Let the enhanced amount of fine be deposited in the trial Court within a period of four months from the date of receipt of copy of this order. Failure in doing so within the time-frame so fixed will make the accused/applicants dis-entitled of receiving the benefit of this order.

6. Revision thus allowed in part.

Sd/-

(Vimla Singh Kapoor)
Judge