

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Misc. Petition No.742 of 2016

Chaitanya Patel, aged 59 years, S/o late Shri Siyaram Patel, Government Teacher, R/o Village Temar, P.S. Sakti, District Janjgir-Champa (C.G.)
 (Accused)
 ---- Petitioner

Versus

State of Chhattisgarh, through the Police Station Sakti, District Janjgir-Champa (C.G.)
 ---- Respondent

For Petitioner: Mr. Somnath Verma, Advocate.
 For Respondent / State: Mr. Ghanshyam Patel, Govt. Advocate and Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/05/2019

1. The petitioner is an accused standing trial for offence punishable under Sections 384 & 385 of the IPC and seeks quashment of charges framed against him for the aforesaid offences which was affirmed by the revisional court in a revision preferred by him.
2. Mr. Somnath Verma, learned counsel for the petitioner, would submit that the learned trial Magistrate as well as the learned revisional Court, both are absolutely unjustified in holding that offence under Sections 384 & 385 of the IPC are made out, as there is no allegation of payment of demanded amount of ₹ 50,000/- and ₹ 5,000/- to the petitioner by Chandrakanti Patel and Uma Shankar Patel, respectively, and as such, the impugned order is liable to be set-aside.
3. Learned State counsel would, however, support the impugned order.
4. I have heard learned counsel for the parties and considered their rival submissions and went through the record with utmost circumspection.

5. Case of the prosecution, in brief, is that on 25-4-2015 at Village Tamar, the petitioner demanded ₹ 50,000/- from complainant Chandrakanti Patel to prevent from boycotting her and thereafter to join her in his caste and on the same day, the petitioner also demanded ₹ 5,000/- from Uma Shankar Patel for the same purpose.

6. Sections 383 and 384 of the IPC provide as under: -

“383. Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”.

384. Punishment for extortion.—Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

7. The Supreme Court in the matter of R.S. Nayak v. A.R. Antulay and another¹, while considering the issue as to when offence under Section 383 of the IPC is made out, held that before a person can be said to put any person to fear of any injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. Their Lordships of the Supreme Court laid down the ingredients of offence under Section 383 of the IPC as under: -

“The main ingredients of the offence are :

(i) the accused must put any person in fear of injury to that person or any other person;

(ii) the putting of a person in such fear must be intentional;

(iii) the accused must thereby 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; and

(iv) such inducement must be done dishonestly.”

¹ AIR 1986 SC 2045

8. Their Lordships agreeing with the principle of laid down in the matter of Habibul Razak v. Emperor² held as under: -

“Before a person can be said to put any person to fear of any injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. If all that a man does is to promise to do a thing which he is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion. We agree with this view which has been indicated in Habibul Razak v. Emperor, AIR 1924 All 197. There is no evidence at all in this case that the managements of the sugar co-operatives had been put in any fear and the contributions had been paid in response to threats. Merely because the respondent was Chief Minister at the relevant time and the sugar co-operatives had some of their grievances pending consideration before the Government and pressure was brought about to make the donations promising consideration of such grievances, possibly by way of reciprocity, we do not think the appellant is justified in his contention that the ingredients of the offence of extortion have been made out. The evidence led by the prosecution falls short of the requirements of law in regard to the alleged offence of extortion. We see, therefore, no justification in the claim of Mr. Jethmalani that a charge for the offence of extortion should have been framed.”

9. Subsequently, in the matter of Isaac Isanga Musumba v. State of Maharashtra³, the Supreme Court has again affirmed that in order to complete the offence under Section 383 of the IPC, delivery of property to the accused person pursuant to threat is must and otherwise, no offence is made out under Section 384 of the IPC.
10. In the instant case, against the petitioner, charges under Sections 384 & 385 of the IPC, both have been framed. Section 385 of the IPC states as under: -

“385. Putting person in fear of injury in order to commit extortion.—Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

11. A careful perusal of the above mentioned charges would only show

² AIR 1924 All 197

³ Scale 2013 7 569

that the petitioner has only demanded ₹ 50,000/- from Chandrakanti Patel and ₹ 5,000/- from Uma Shankar Patel. The aforesaid amount of ₹ 50,000/- and ₹ 5,000/- was not paid to the petitioner pursuant to threat and there is no such charge framed in this regard. As such, in view of the definition contained in Section 384 of the IPC, no property has been delivered to the petitioner and thus, offence under Section 384 of the IPC would not be made out. However, the question would be, whether Section 385 of the IPC would be made out against the petitioner.

12. In the matter of Ram Chandra v. State of U.P.⁴, a boy was kidnapped and threatening letters demanding ransom were sent to his father stating that unless ransom was paid they would murder the boy. Their Lordships of the Supreme Court held that it is kidnapping and extortion.

13. In the matter of Biram Lal v. State⁵, it was held that Section 383 of the IPC defines 'extortion' whereas Section 384 of the IPC is the penal section for extortion whereas Section 385 of the IPC is for attempt to commit extortion. In order to complete the act of extortion, the person who was put in fear must have been induced to deliver the property. If the act of inducement caused by the wrong doer should bring forth its result at least by the victim consenting to deliver property even if actual delivery does not take place due to any fortuitous circumstances which would constitute extortion, but if it fails to produce the requisite effect, the act would remain only at the stage of attempt to commit extortion. In the instant case, even if the offence of extortion is held to be not made out for want of delivery of the property at least, the offence of attempt to commit extortion is clearly made out

4 AIR 1957 SC 381

5 2006 SCC OnLine Rajasthan 603

as has been held in the matter of Romesh Chandra Arora v. State⁶.

14. In the instant case, as already been held, for want of delivery of amount to the accused no offence under Section 384 of the IPC is made out taking the charges in its face value, but certainly it cannot be held at this stage, that offence under Section 385 of the IPC would also be not made out. It is a matter of trial that whether the charge framed under Section 385 of the IPC would sustain or not.
15. In the result, the petition is partly allowed. Charge for offence under Section 384 of the IPC is quashed, however, the trial Court is directed to proceed with the trial for offence under Section 385 of the IPC.
16. A copy of the order be sent to the trial Court by E-mail / fax.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

⁶ AIR 1960 SC 154