

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

CRIMINAL REVISION APPLICATION NO. 379 OF 2018

Rajan Manohar Dongre & Ors.	...	Applicants
V/s.		
The State of Maharashtra	...	Respondent

**WITH
CRIMINAL APPLICATION NO. 443 OF 2019
IN
CRIMINAL REVISION APPLICATION NO. 379 OF 2018**

Yuvraj Prakash Gund	...	Intervenor
<u>In the matter between</u>		
Rajan Manohar Dongre & Ors.	...	Applicants
V/s.		
The State of Maharashtra	...	Respondent

Mr.M.S. Mohite i/b. Mr.M.V. Thorat for Applicants.
Mr.Tejas Hilage for Intervenor.
Mr.R.M. Pethe, APP for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 25th September 2019.

PC. :

1] By the present Revision under Section 397 of the Criminal Procedure Code, the applicants have questioned the correctness, legality

and propriety of Order dated 20th June 2018 passed below Exhibit 24 in Sessions Case No. 334 of 2016, rejecting the said application filed by the applicants under Section 227 of the Criminal Procedure Code (*for short, "Cr.PC."*) for their discharge from the offence punishable under Section 329 of the Indian Penal Code (*for short, "I.P.C."*).

2] Heard Mr.Mohite, learned counsel for the applicants, Mr.Pethe, learned A.P.P for the respondent-State and Mr.Hilage, learned counsel for the first informant. Perused the record.

3] It is the prosecution case that, on 8th April 2015 at about 7.30 pm the applicants formed unlawful assembly and in furtherance thereof assaulted the informant and other witnesses with deadly weapons. When Smt.Surekha Prakash Gund, the mother of informant, tried to intervene and pacify the fight, it is alleged that, all the accused persons assaulted her. It is further alleged that, the applicant No.3 Bantu @ Vilas Nivrutti Wagaj forcibly snatched a chain made up of gold metal from the neck of Smt.Surekha Gund. After completion of investigation, Police submitted charge-sheet under Section 326, 329, 354, 143, 147, 148, 149, 120(B) of I.P.C..

4] It is the contention of the applicants that, in view of the first information report and the statements of witnesses, Section 329 of I.P.C. has been wrongly applied to the present crime. The applicants therefore filed an application below Exhibit 24 for their discharge from the offence punishable under Section 329 of I.P.C. before the Trial Court. The Trial Court by its impugned Order dated 20th June 2018 has rejected the said application.

5] A bare perusal of the first information report would indicate that, when Smt.Surekha Gund tried intervene to pacify the assault on her son, the applicants assaulted her and in the said assault, the applicant No.3 Bantu@ Vilas Wagaj snatched the chain made up of gold metal from the person of Smt.Surekha Gund.

6] The basic ingredient for application of Section 329 of I.P.C. is 'extortion' from the sufferer or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything that is illegal or which may facilitate the commission of an offence, coupled with causing voluntarily grievous heart for that purpose.

Section 383 of the I.P.C. defines the term 'extortion' as, 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'.

Section 390 of I.P.C. defines the term 'Robbery'. It is stated that, theft is robbery, if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint, is said to have been committed robbery.

7] In the present case, it is the specific prosecution case that, when Smt.Surekha Gund tried to intervene and pacify the said fight, wherein the accused persons were assaulting Yuvraj Gund and Suresh Gund, the applicants herein also assaulted her and as noted earlier, the applicant No.3-Bantu @ Vilas Wagaj snatched the chain made up of gold metal from the person of Smt.Surekha Gund. Thus, the ingredients of

extortion by the applicants qua Smt.Surekha Gund are silent in the present case.

8] In view of the definition of robbery, as noted earlier, according to me, at the most an offence as contemplated under Section 392 or 397 of I.P.C. can be said to have been committed by the applicants, but certainly an offence under Section 329 of I.P.C. is not be made out.

9] In view thereof, the impugned Order dated 20th June 2018 passed below Exhibit-24 in Sessions Case No.334 of 2014 passed by the Additional Sessions Court, Solapur, is hereby quashed and set-aside and the said application is allowed. The applicants are discharged from Section 329 of I.P.C. from the said crime.

10] The Trial Court is directed to consider the aforestated observations at the time of framing of charge and may add Section 392 or 397 of I.P.C. after perusing the evidence available on record in that behalf.

11] Application is allowed in the aforesaid terms.

12] In view of Order passed in Revision Application No.379 of 2018, the Application No.443 of 2019 for intervention does not survive and is accordingly disposed off.

[A.S. GADKARI, J.]