

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4082 OF 2019**

Shadab Haider Mehndi .. Petitioner

Vs

State of Maharashtra .. Respondents

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Mr. Subhash Jha i/b Law Global for the Petitioner.

Mr. H.J. Dedhia, A.P.P. for the State.

CORAM: SMT. BHARATI DANGRE, J.

DATED : 11TH OCTOBER, 2019.

P.C:-

1. On 07/12/2016, a Complaint came to be lodged by one Mr. Kishor Chandrakant Londhe, who proceeded to state that on the evening of 06/12/2016, he was proceeding to Biroba Temple, Govandi, Mumbai for offering his prayers. He was accompanied by his sister. It is stated in the Complaint that at around 10.35 p.m., when they were waiting at the bus stop, four persons intercepted them and one amongst them placed a knife on his neck and threatened the Complainant that if he utters a single word, he

would cut him and at the same time, the second person removed an amount of Rs.1,000/- from his pocket whereas the third person snatched away a purse carried by his sister and the fourth assailant hit her, resulting in her fall. Based on this precise allegation, an offence was registered under Sections 397, 392 read with Section 34 of the IPC at Deonar Police Station, Mumbai. The four Accused persons came to be arrested and there was recovery of a knife during the course of investigation vide panchnama dated 08/12/2016. The panchnama describes the knife to be an iron knife of 10” length of which 4” is the handle and 6” is the blade of the knife which is sharp at one edge with a tapering end.

2. The Petitioner preferred an application before the Sessions Court seeking his discharge from the Sessions Case or in the alternative he prayed for deletion of Section 397 of the IPC which was invoked and applied against him.

3. Mr. Jha, learned counsel would submit that the invocation of Section 397 against the Petitioner is nothing but a result of

misinterpretation of ingredients pertaining to the offences of robbery and dacoity contained in the IPC and he would submit that Section 397 which is triable by a Court of Sessions would deprive him of one remedy being availed before the Sessions Court if he was to be tried only under Section 392 of the IPC. Mr. Jha has relied upon the judgment of the Constitution Bench of the Apex Court in *A.R. Antulay v. R.S. Nayak & Anr. reported in (1988) 2 SCC 602* to support his submission. As regards the description of the knife, Mr. Jha would submit that the knife is a small knife and cannot fall within the terminology of 'deadly weapon' used in Section 397 and, therefore, he cannot be made to suffer a charge under Section 397 of the IPC.

4. With the assistance of Mr. Jha and learned A.P.P., I have perused the papers placed on record which include the First Information Report as well as the recovery panchnama. The Petitioner has been charged under Section 392 as well as under Section 397 of the IPC. Undisputedly, offence under Section 390 'Of Robbery and Dacoity' deals with situations 'when theft is

robbery’ and ‘when extortion is robbery’. Extortion partakes the form of robbery when the offender at the time of extortion is put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted. Section 391 of the IPC defines ‘dacoity’ as when five or more persons conjointly commit or attempt to commit a robbery, then it would amount to dacoity. Section 397 is very peculiar in the sense that it deals with a situation where at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person. Such an offence is then punishable with rigorous imprisonment for not less than seven years and is triable by the Court of Sessions. It is pertinent to note that Section 397 uses the phraseology “uses any deadly weapon”. There is no substance in the submission of Mr. Jha that the word ‘uses’ has to be used ejusdem generis causing or attempting to cause death or grievous hurt of any person. The Section implies the

term 'use of any deadly weapon' in disjunct of the remaining terms and it necessarily conveys that if the offender uses the deadly weapon for committing robbery or dacoity, Section 397 is attracted. Robbery is said to be committed under Section 390 when the person while committing extortion puts another person in fear, and commits the extortion by putting that person in fear, of instant death or instant hurt, or of instant wrongful restraint to that person or to some other person, and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

5. In this connection, the phraseology 'uses' adopted in Section 397 need not necessarily culminate in a grievous hurt or it may not be stretched to say that there must be a grievous hurt putting that person in fear of death. The 'use of deadly weapon' to put the person in fear of instant death, causing him to deliver the thing extorted, is the necessary ingredient which would make a person liable for punishment under Section 397.

6. Mr. Jha relied upon two decisions of the Delhi High Courts to assert in what circumstances, a knife would be a deadly weapon and he would strenuously argue that the description of the knife which has been recovered under the panchnama does not fulfill the requirement of 'deadly weapon' for the purpose of Section 397. It is, no doubt, true that the term 'deadly weapon' is not defined in the IPC but necessarily, as the term itself indicates, it is such a weapon which is capable of causing death. What would be such a weapon would depend upon the facts and circumstances of the case. It would also depend upon in which manner it was put to use and the part of the body where it is sought to be applied resulting into a fear of death or actually causing a grievous hurt, per se. The said position is fortified in the decision of the Delhi High Court on which Mr. Jha has placed reliance in particular paragraph No.6 in the case of **Balik Ram v. The State reported in 1983 Cr.L.J. 1438.**

7. The knife which has been put to use as described in the panchnama is having a blade of six inches and sharp edge on one side. This weapon was placed on the neck of the Complainant,

putting him under the fear of causing injury, and this manner in which the money has been extorted from the Complainant as well as his sister, is sufficient to demonstrate that the weapon has been put to use for the purpose of committing extortion and necessarily would attract Section 397 of the IPC.

8. In the light of the aforesaid situation, I do not see any legal infirmity in the order passed by the Additional Session Judge on 01/08/2019 in rejecting the Application seeking his discharge from the Sessions Case or deletion of Section 397 invoked and applied against the Petitioner. Resultantly, the present Criminal Writ Petition is without any merit and substance and is dismissed.

9. Needless to state that the observations made by this Court would only be construed to be meant for the purpose of determination of issues that were raised and dealt in the present Writ Petition and for no other purpose.

(SMT. BHARATI DANGRE, J.)