

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 28 OF 2020

1. Anisa Begum W/o Abdul-Hafiz Khan
Age: 43 years, Occu : Housewife,
R/o : Opposite Panchayat Samiti Office,
Beside Ruby Hospital, Peer Gaib Colony,
Aurangabad – 431 001.
Presently residing at – Flt No.8,
Hashmi Complex, Opposite Ajay Medical,
Ghati Makai Gate, Aurangabad – 431 001.
2. Samreen D/o Abdul-Hafiz Khan
Age: 21 years, Occu : Private Service,
R/o : Opposite Panchayat Samiti Office,
Beside Ruby Hospital, Peer Gaib Colony,
Aurangabad – 431 001.
Presently residing at – Flt No.8,
Hashmi Complex, Opposite Ajay Medical,
Ghati Makai Gate, Aurangabad – 431 001.
3. Shareq Khan S/o Abdul-Hafiz Khan
Age: 19 years, Occu : Mechanic,
R/o : Opposite Panchayat Samiti Office,
Beside Ruby Hospital, Peer Gaib Colony,
Aurangabad – 431 001.
Presently residing at – Flt No.8,
Hashmi Complex, Opposite Ajay Medical,
Ghati Makai Gate, Aurangabad – 431 001.
4. Abdul Hafiz Khan S/o Majid Khan
Age: 48 years, Occu : Driver,
R/o : Opposite Panchayat Samiti Office,
Beside Ruby Hospital, Peer Gaib Colony,
Aurangabad – 431 001.
Presently residing at – Flt No.8,
Hashmi Complex, Opposite Ajay Medical,
Ghati Makai Gate, Aurangabad – 431 001.

5. Sumaiyya Abdul Hafiz Khan W/o Shaikh Akhtar,
Age: 26 years, Occu : Housewife,
R/o : Opposite Panchayat Samiti Office,
R/o: Lane No.05, Qaiser Colony,
Aurangabad – 431 001.

... PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Secretary, Home Department,
Mantralaya, Mumbai – 400 032.
2. The Director General of Police,
Maharashtra.
dgpms.mumbai@mahapolice.gov.in.
3. .Additional Director General of Police,
Protection of Civil Rights Unit, Mumbai.
adg.pcr.mumbai@mahapolice.gov.in.
4. The Inspector General of Police,
Aurangabad Range, Aurangabad.
ig.aurangabadrange@mahapolice.gov.in.
5. Shri. Chiranjeev Prasad,
The Hon'ble Commissioner of Police,
Aurangabad – 431 001.
6. Shri. Gite
Assistant Police Inspector,
Jinsi Police Station, Aurangabad – 431 001.
Phone: +91 9372501212.
7. Feroz Ahmed Khan,
Age: 40 years,
R/o D.R.T.-29, Labour Colony Quarters,
Fazalpura, Aurangabad – 431 001.
8. Mehrunnisa Begum @ Moti Bhabhi,
Age: 55, Occu : Ex-Corporator,
R/o: Near Aijaz Kirana Store,
Rahat Colony, Aurangabad – 431 001.

9. Sattar Khan s/o Gaffar Khan,
Age: 35 years,
R/o : Opposite Raheed Tea House,
Champa Chowk, Sahabazar,
Aurangabad – 431 001.
10. Sohel Khan S/o Hamid Khan,
Age: 32 years,
R/o. Near Aijaz Kirana Store,
Rahat Colony, Aurangabad – 431 001. ... RESPONDENTS

...

Mr. Mohd. Aseem h/f Mr. Tauseef Yaseen Sayyed, Advocate for Petitioners.

Mr. M. M. Nerlikar, APP for Respondent Nos.1 to 4.

Mr. R. G. Joshi, Advocate for Respondent Nos.5 to 7.

...

CORAM : T. V. NALAWADE &
M. G. SEWLIKAR, JJ.

DATE : 03rd March, 2020.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The present proceeding is filed for relief of quashing of FIR No.4376 of 2019, registered with Jinsi Police Station, District

Aurangabad, for the offences punishable under Sections 387, 506 and 34 of the Indian Penal Code. Other two reliefs were also claimed in respect of other two crimes for seeking direction to make investigation through other agency, but those reliefs were not pressed as this Court expressed that separate proceedings ought to have been filed for those reliefs.

3 The crime is registered on the basis of report given by Respondent No.7, Feroz Ahmed Khan. Report was given to police on 22nd November, 2019 in respect of incident dated 15th August, 2018. It is contended by the informant that he is owner of house constructed on plot Nos.4 and 7, which consist of three rooms as this property was given to him under *Hiba* by his relative Gaffar Khan. It is his contention that all the Petitioners were living in this house on rent basis prior to *Hiba* and so he was asking them to vacate the house. It is contended that they had requested him to give them time of one year as construction of their house was going on and they had promised to vacate the house. It is contended that due to such promise, on 15th August, 2018, he visited the house and requested the Petitioners to vacate the house but they refused to vacate the house and they demanded Rs.4,00,000/- for vacating the house. It is contended that as the informant is owner of the house, there was no

question of giving Rs.4,00,000/- to the persons like Petitioners and he felt that the Petitioners are asking him to give ransom of Rs.4,00,000/-. According to him, threat of life was given and threat of involving the informant in false case was also given. It is contended that in subsequent incident dated 30th May, 2019, when he and his wife Ayesha Begum had gone there to convince the Petitioners to vacate the house, they said that they had with them some documents, which may be forged and on that basis they would claim ownership right and so he should give them money. It is contended that they did not give rent and they were asking for Rs.4,00,000/-. So, report came to be given in respect of two incidents of 22nd November, 2019.

4 The submissions made and record show that both the sides are contending that the deceased had gifted the property to them. It is the contention of Petitioners that *Hiba* document was executed in their favour on 12th February, 2018 (in favour of Hafiz Khan) and entry in the assessment record is also made of the name of Hafiz Khan on the basis of *Hiba*. On the other hand, it is the contention of informant that the property was given to him in the year 2017. Thus, there is dispute of civil nature between the two sides. Admittedly, the Petitioners are in possession of atleast the portion, which is shown in *Hiba* dated 12th February, 2018. The statements

recorded by police show that there was some settlement in the past but the informant did not act as per the settlement. In view of the ingredients of offence of extortion, this Court holds that it cannot be said that the present Petitioners have committed the offence punishable under Section 387 of the Indian Penal Code on the basis of aforesaid allegations. Even if it is presumed that there was some settlement and informant had agreed to give some money, it can be said that they wanted to settle civil dispute and there was no threat, which is required to be made out for the offence punishable under Section 387 of the Indian Penal Code.

5 The learned counsel for Petitioners placed reliance on some observations made by the Patna High Court in the case reported as *(1987) CriLJ 137, (Ramjee Singh Vs. State of Bihar)*. The facts and circumstances of each and every case are always different. In view of the facts of present matter, which are quoted, this Court holds that it will be abuse of process of law if the Petitioners are directed to face the trial for aforesaid offences. In the result, the following order is passed:

ORDER

- I. The petition is allowed.

II. Relief is granted in terms of prayer clause (B).

III. Rule is made absolute in those terms.

[M. G. SEWLIKAR, J.]

[T. V. NALAWADE, J.]

ndm