

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

34 CRIMINAL APPLICATION NO. 1284 OF 2021

SAYED TOUSIF S/O. KAMAR ALI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Jagdish V. Deshpande
APP for Respondent No.1-State : Mr. S. P. Deshmukh
Advocate for Respondent No.2 : Mr. Balraj Prakash Pande

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CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 25th OCTOBER, 2021

ORDER :-

1. Heard finally with consent at admission stage.
2. The applicant is seeking quashing of the FIR bearing no. 55 of 2021 registered with Pundlik Nagar Police Station, Aurangabad City for the offence punishable under Sections 384, 385, 389 r/w 34 of IPC. During pendency of this criminal application, charge sheet came to be submitted and the applicant, under leave of the Court, amended the prayer clause and now also seeking quashing of the criminal proceedings.
3. Brief facts of the case are as follows:

a. Co-accused Sayed Shahin Ali was in a private employment at Aurangabad since 2015. Thereafter, intimacy came to developed between the informant and co-accused Sayed Shahin. Even though co-accused Sayed Shahin was removed by her employer, and she remained unemployed for a certain period, respondent no.2-informant had financially helped her. Thereafter, in the year 2020 and onwards, there was substantial change in the behaviour of co-accused Sayed Shahin. Consequently, respondent no.2 started avoiding her. Co-accused Sayed Shahin being annoyed by the same, from 28.11.2020 and onwards, started harassing the informant mentally by making frequent phone calls. Even she has placed certain cropped photographs on social media in order to defame respondent no.2-informant. Respondent no.2-informant has questioned her about it and thereupon co-accused Sayed Shahin has started blackmailing respondent no.2. Even on one occasion on 05.12.2020, co-accused Sayed Shahin has entered in the house of respondent no.2, abused his wife Nafisa and also extended beating to her. Consequently, wife of the informant has lodged complaint in the Pundlik Nagar Police Station and on the basis of her complaint crime no. 373/2020 came to be registered for the offence punishable under Sections 452, 323, 504, 506 of IPC. Thereafter,

co-accused Sayed Shahin started demanding substantive amount of Rupees Fifty One Lakh and also a 2 BHK furnished flat by blackmailing respondent no.2-informant.

b. So far as the present applicant is concerned, he is the real brother of said co-accused Sayed Shahin. He is residing at Raipur, Chhattisgarh with her mother, wife and children. He is working as Bank Manager in IDFC Bank, Branch at Dhamtari (Chhattisgarh State). It has been alleged in the complaint that the present applicant has helped his sister co-accused Sayed Shahin for said blackmailing.

4. Learned counsel for the applicant submits that accepting the allegations that the present applicant has helped his sister in making demands to respondent no.2-informant, there is no further evidence against the applicant. Learned counsel submits that the allegations as against the applicant are absurd in nature and even if those allegations are taken as proved, no case is made out. Learned counsel submits that even though respondent no.2-informant has alleged in the complaint that he has given a pen drive of certain audio and video recording to the Investigating Officer and even

though the Investigating Officer has seized the said pen drive, however, on perusal of the transcript of the conversation in the said pen drive, no case is made out against the applicant.

5. Learned counsel submits that in the given set of allegations, charge under Section 384 is not at all attracted for the reason that there was no delivery of property. Learned counsel submits that if the offence of extortion as defined under Section 383 of IPC is not attracted, then Sections 384 and 385 cannot be attracted. Learned counsel submits that even there is an inordinate delay in lodging the complaint and the FIR and the criminal proceedings are liable to be quashed on this ground alone.

6. Learned counsel for the applicant, in order to substantiate his contention, placed reliance on the following three cases:

1. ***Sanjay Pandey, D.C.P, Narcotic ... v. Chhaganlal J. Jain & Ors.*** [2001 (4) MhLJ 507]
2. ***R. S. Nayak v. A. R. Antulay and another*** [1986 Cri.L.J. 1922]
3. ***Shriram Satwaji Jadhav v. The State of Maharashtra and others*** [Criminal Writ Petition No. 325 of 2003 decided by this Court on 26.06.2014]

7. Learned counsel for respondent no. 2-informant submits that as per the allegations made in the complaint, by giving threat of lodging complaint of commission of rape, co-accused Sayed Shahin has taken an amount of Rs.11,00,000/- in cash and also an i-phone worth Rs.59,900/- from respondent no.2-informant. In addition to that, co-accused Sayed Shahin was also blackmailing respondent no.2-informant for further cash amount of Rs.51,00,000/- and a 2 BHK furnished flat. It has been specifically alleged in the complaint that for all these acts, the present applicant, who happened to be the brother of co-accused Sayed Shahin, has helped her along with another person whose name is Raj. Learned counsel submits that during the course of investigation, the Investigating Officer has recorded statement of one Shaikh Mustaf, who handed over the audio and video clips of the conversation to respondent no.2-informant and the said audio and video clips are in the pen drive. During the course of investigation, the Investigating Officer has seized the said pen drive by drawing panchanama. Learned counsel submits that if at all there is deficiency in the transcript or in the alleged conversation, it is for the trial court to appreciate the same after effective cross-examination to the concerned witness on the

said point. Learned counsel submits that there is triable case against the applicant.

8. Learned APP submits that there is a triable case against the applicant. The Investigating Officer has recorded the statement of Shaikh Mustaf and also seized the pen drive. Learned APP has pointed out that the transcript of the said conversation as appearing in the audio and video clips which runs into 17 pages and that pertains to the conversation between respondent no.2-informant and co-accused Sayed Shahin. It is for the trial court to appreciate the said evidence on its own merits.

9. We have carefully gone through the allegations made in the complaint and also the charge sheet. There are serious allegations against co-accused Sayed Shahin, who has allegedly put the respondent no.2-informant in fear of injury and subjected respondent no.2-informant to blackmailing, and also procured substantive cash amount and the costly i-phone from him. It has also been alleged in the complaint that in addition to that, co-accused Sayed Shahin was also demanding cash amount of Rs.51,00,000/- and also a 2 BHK furnished flat from respondent

no.2-informant. There are allegations that for all these demands under the fear of injury to reputation of respondent no.2, the applicant being the brother, has helped co-accused Sayed Shahin. So far as the provisions of Section 384 of IPC are concerned, it is true that the main ingredient of Section 383 is the delivery of property. We cannot consider at this stage the allegations made in the complaint separately. There are allegations that initially co-accused Sayed Shahin, with the help of her brother i.e. the present applicant, has procured cash amount of Rs.11,00,000/- and one i-phone worth Rs.59,900/- from respondent no.2-informant. The said amount and the i-phone came to be procured by giving threats of lodging complaint for commission of rape. Thus the main ingredients of Section 384 stand attracted. So far as the second demand is concerned, there is no delivery of property. In the given set of allegations pertaining to the said second demand about cash amount of Rs.51,00,000/- and a 2 BHK furnished flat, section 385 stands attracted.

10. We have carefully perused the charge sheet. The Investigating Officer has recorded the statement of one Shaikh Mustaf Shaikh Kayyum on 17.02.2021. He had accompanied

respondent no.2-informant who visited the showroom for purchasing a Range Rover four-wheeler and at that time, according to him, respondent no.2-informant met co-accused Sayed Shahin. She is hailing from Raipur, Chhattisgarh and the wife of respondent no.2-informant is also hailing from the same area. Thus, intimacy developed between them. The witness Shaikh Mustaf has supported the allegations made in the complaint and also stated in his statement that respondent no.2-informant has given the amount of Rs.11,00,000/- in cash to co-accused Sayed Shahin and also an i-phone worth of Rs.59,900/-. He has further stated that even thereafter, with the help of the brother, co-accused Sayed Shahin started demanding some more things. He has handed over the pen drive consisting of the audio and video clips of the conversation of co-accused Sayed Shahin with respondent no.2-informant. It further appears from the charge sheet that the Investigating Officer has seized the said pen drive under the seizure panchanama. It is true that the transcript of the said conversation runs into 17 pages and only after effective cross-examination of the respondent-informant, it is possible for the trial court to appreciate the said evidence in the light of the submissions made on behalf of the applicant before us. It thus appears that the allegations as against

the applicant are indicating his involvement in commission of the crime. There is a triable case against him.

11. So far as cases relied upon by learned counsel for the applicant are concerned, in view of the discussion above, we find that the view expressed in those cases is not applicable to the facts and circumstances of the present case.

12. In the case of ***State of Haryana and others v. Ch. Bhajan Lal and others***, reported in **AIR 1992 SC 604**, in para 105 of the judgment, the Supreme Court has framed guidelines to exercise the extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 of the Criminal Procedure Code for quashing of the proceedings. Clauses 1, 3 and 4 of those guidelines are reproduced herein below:

105. 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2.

3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

4. *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.”*

13. In the instant case, as discussed above in detail, the allegations made in the FIR and the investigation carried out in respect of those allegations do *prima facie* constitute an offence and make out a case against the applicant. Even the allegations in the FIR do constitute a cognizable offence. In para 106 of the judgment in ***State of Haryana and others v. Ch. Bhajan Lal and others*** (supra), the Supreme Court has further observed that;

“We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the

complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.”

14. Though learned counsel for the applicant has vehemently submitted about the *mala fides* in the allegations, however, in para 111 of the judgment in ***State of Haryana and others v. Ch. Bhajan Lal and others*** (supra), the Supreme Court has observed that;

“It is a well established proposition of law that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant”.

15. In the instant case, the allegations are clear. The allegations in the complaint clearly attract the provisions of Sections 384, 385 and 389 of IPC. There is a triable case against the applicant. In view of the same, and in terms of the ratio laid down by the Hon’ble Supreme Court in the case of ***State of Haryana and others v. Ch. Bhajan Lal and others*** (supra), we proceed to pass the following order:

ORDER

Criminal Application No. 1284 of 2021 is hereby dismissed and disposed off accordingly.

(SANDIPKUMAR C. MORE, J.)

(V. K. JADHAV, J.)

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