

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO. 513 OF 2021

Balvir Rameshsingh Chavhan,
Aged 34 years, Occu. Agriculturist,
R/o. Thakurpura, Nandgaonpeth,
Amravati, Tq. and Dist. - Amravati.

.....**APPLICANT**

... **VERSUS** ...

1. State of Maharashtra,
Through Police Station Officer,
P. S. Nandgaonpeth, Amravati,
Tah. & District Amravati.

2. Commissioner of Police,
Amravati City, Amravati.

3. Mukesh S/o. Ashokkumar Jagmalani,
Aged 35 years, Occu. Business,
R/o. Dastur Nagar, MIDC Road,
Amravati, Distt. Amravati.

.....**NON-APPLICANTS**

Shri P. V. Navlani, Advocate for Applicant.

Shri S. M. Ghodeswar, Additional Public Prosecutor for Non-applicants/State.

Shri J. B. Kasat, Advocate for Non-applicant No.2.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 03.09.2021.

ORAL JUDGMENT : (PER AMIT B. BORKAR, J.)

1. Heard.

2. Rule. Rule is made returnable forthwith.

3. By this application under Section 482 of the Code of Criminal Procedure, the applicant is challenging registration of the

First Information Report No.169/2021 for the offence punishable under Section 385 of the Indian Penal Code.

4. The First Information Report came to be registered against the applicant with the accusations that the complainant/non-applicant No.3 was found in his shop during restrictions imposed under the Epidemic Diseases Act, 1897 and the complainant/non-applicant No.3 had visited his shop for the purpose of taking file and when he was inside the shop and the shutter was closed, the applicant came in his shop and asked the non-applicant No.3 as to why he has opened the shop when the restrictions are in force. It is also alleged that the applicant demanded an amount of Rs. 5000/- from the non-applicant No.3 as a bribe. It is also alleged that the applicant threatened that if the non-applicant No.3 does not pay the amount, it will become difficult for the non-applicant No.3. Thereafter, the applicant took photograph of the shop of the non-applicant No.3 and called concerned officials and imposed fine of Rs.5000/-. Therefore, complaint under Section 385 of the Indian Penal Code was registered.

5. The applicant has therefore challenged registration of the First Information Report by way of filing present application. This Court on 06.05.2021 issued notice to the non-applicants. The

non-applicant No.1 has filed reply stating that the Investigating Agency has recorded statement of the witnesses who were present on the spot at the time of incident. It is stated that the salesman – Goverdhan Kanhaiyalal Puraswami has stated in his statement that the applicant has demanded an amount of Rs.5000/-. The non-applicant No.3 has also filed reply stating that the applicant had demanded an amount of Rs.5000/- and therefore, has committed an offence under Section 385 of the Indian Penal Code.

6. We have carefully considered the allegation in the First Information Report and the reply filed by the non-applicant Nos.1 and 3. At this stage, it is necessary to consider Section 385 of the Indian Penal Code, which reads 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.”

7. On careful perusal of the First Information Report itself, it is clear that the non-applicant No.3 has paid an amount of Rs.5000/- as a fine. The said fact is clear from the Annexure No.III on page 20. Once the fact of payment of fine is brought on record by the applicant himself, it is improbable that the applicant would demand an amount of Rs. 5000/- from the non-applicant

No.3 for not imposing fine amount of Rs. 5000/- from the non-applicant No.3. It appears that the non-applicant No.3 had opened his shop though he was prohibited from opening the shop during restrictions under Epidemic Diseases Act, 1897 were in force. Therefore, in our opinion filing of the present First Information Report against the applicant for performing his lawful duty is nothing but abuse of process of law. We are therefore, satisfied that the filing of prosecution against the applicant is not a legitimate prosecution and continuation of the same would amount to abuse of process of Court.

8. We therefore, pass following order :

The First Information Report No.169/2021 dated 23.04.2021 registered against the applicant with the non-applicant No.1 – Police Station for the offence punishable under Section 385 of the Indian Penal Code, is quashed and set aside against the applicant.

9. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE