

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

CRIMINAL APPLICATION (APL) NO. 404 OF 2019

Rajnikant S/o Daluram Borele,
Age : 43 yrs, Occ : Social Worker,
RTI Activist and Whistle Blower
R/o : Supuch Chhaya, Kiran Factory Road,
Rani Laxmibai Road, Akhada, Pandharkawda,
Dist : Yavatmal.

.... **Applicant**

- **Versus** -

(1) State of Maharashtra,
Through Police Station Officer,
P. S. Yavatmal, Tah. & Dist : Yavatmal.

Amended as
per Court
order dtd.
14.10.2019

(2) Tukaram s/o Shankarrao Gedam
Aged about : 63 yrs, Occu : Service,
Sub-Divisional Police Officer,
Pandharkawda, Dist : Yavatmal.

.... **Non-applicants /
Respondents**

Mr. J. M. Gandhi, Advocate for the applicant
Mr. S. S. Doifode, APP for the State/non-applicant 1
Mr. A. S. Sonare, Advocate for non-applicant 2

**CORAM : ROHIT B. DEO, J.
DATED : 11TH FEBRUARY, 2021.**

ORAL JUDGMENT

Heard.

2. With consent, the application is finally heard at the

admission stage.

3. The applicant Mr. Rajnikant Daluram Borele, who shall be hereinafter referred to as the accused, is facing trial for offences punishable under Sections 189 and 385 of the Indian Penal Code (IPC) in Summary Criminal Case 1833/2011 which is pending in the Court of Judicial Magistrate First Class, Court No. 5, Yavatmal.

4. The final report under Section 173 of the Code of Criminal Procedure, 1973 (Code) is submitted consequent to the culmination of the investigation in connection with report dated 24-7-2011 lodged by Mr. Tukaram s/o Shankarrao Gedam who then was the Sub Divisional Police Officer at Pandharkawda, District Yavatmal. The substratum of the report is that the accused approached Mr. Shalikram Baliram Bharadi who then was working as District Supply Officer, Yavatmal and after engaging in a preliminary conversation demanded money from the said officer under the threat of approaching High Court and exposing “misdeeds” (the word used in vernacular is “काळे बेरे”), the accused unsuccessfully endeavoured to persuade the learned Magistrate to discharge him from the offences under Sections 189 and 385 of the IPC. The accused then approached

the learned Sessions Judge, Yavatmal in Criminal Revision 5/2018 reiterating that even if, the entire material in the final report is accepted at face value, no offences punishable under Sections 189 and 385 of the IPC are made out. The submission did not find favour with the learned Sessions Judge and the revision came to be dismissed vide judgment dated 8-1-2019. Being aggrieved, the accused is invoking the inherent powers of this Court.

5. The short question which falls for consideration is whether, taken at face value, the material in the record of the trial Court warrants a trial ?

6. Before I advert to the material on the record, it would be apposite to note that the trial is a summons trial and, therefore, the application seeking discharge preferred by the accused, was clearly misconceived. Such an application could have been entertained, if at all, under Section 258 of the Code. The revisional Court rightly noted that the application seeking discharge was not tenable. I am, however, inclined to consider the question raised on merits. Assuming that the accused approached the learned Magistrate quoting a wrong provision, the inherent power of this Court is wide enough to

interfere, if this Court finds that continuation of the proceedings shall amount to an abuse of process of law.

7. The alleged incident occurred on 7-3-2009 in the official chamber of Mr. Shalikram Baliram Bharadi. It is discernible from record that the said officer did not lodge complaint in writing, in close proximity with the incident, much less, in immediate proximity. The only material which is available in the record is the statement of the said officer recorded on 26-7-2011. The statement of Mr. Anil Bansod, then Additional Collector which according to the prosecution is incriminatory is that the accused informed him that the other officers pay him certain amount. Mr. Anil Bansod does not allege that the accused put him in fear of any injury or for that matter, accused demanded any amount. It is indubitable that the only material placed on record along with the final report is the statement of Mr. Shalikram Baliram Bharadi, the gist of which is noted supra.

8. Section 383 of the IPC defines extortion thus :

383. Extortion — *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".

9. The *sine qua non* ingredient to make out an offence of extortion is that the accused shall have intentionally put any person in fear of any injury to that person.

10. The expression "injury" is defined in Section 44 of the IPC which reads thus :

44. "Injury" — *The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.*

Injury, therefore, refers to any harm whatever **illegally** caused to any person, in body, mind, reputation or property (emphasis supplied).

11. The expression "illegal" is defined in Section 43 of the IPC which reads thus :

43. "Illegal", "Legally bound to do" — *The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit.*

For an act or omission to be illegal, the act or omission shall have to

be an offence or which is prohibited by law or which furnishes ground for a civil action.

12. The seminal issue is, testing on the anvil of the provisions of Sections 43, 44 and 383 of the IPC, does the material on record make out a case to presume that the accused has committed the offence alleged.

13. The ingredients of Section 189 of the IPC are identical in the sense that threat of injury must be held out to the public servant. Section 189 of the IPC reads thus :

189. Threat of injury to public servant — *Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

The alleged threat held out by the accused to Mr. Shalikram Baliram Bharadi was that if amount is not paid, the misdeeds or wrongdoings shall be exposed by approaching the High Court. Approaching the

High Court can by no stretch of imagination be considered as an offence or an act prohibited in law or such act as would furnish a cause of action for civil wrong. Be it noted that, the threat was to expose the misdeeds and wrongdoings. A threat to involve a person in an offence on trump up or false allegations or a threat akin thereto stands on a different pedestal. In my considered view, considering the expansion of the jurisdiction of the High Court to entertain public interest litigations, the wide and ever expanding dimensions of *locus standi*, it would be difficult to hold that threat to expose the misdeeds or wrongdoing by approaching the High Court would amount of extortion.

14. It would be apposite to refer to the decision of the Madras High Court in the case of ***Mantripragada Mattapalli Narasimha Rao (AIR 1919 Madras 953)***.

A cooly was discovered transporting liquor from the Nizam's Dominions into British Territory. The accused threatened the cooly that should some amount not be paid, the British Police shall be informed. Spencer, J. held : Considering the definition of injury in Section 44 of IPC, there would have been nothing illegal in lodging a

report, and, therefore, the offence punishable under Section 385 is not made out.

15. In *Laxmi Dhar & another (1951 Cr.L.J. 873), Ajmer Judicial Commissioner's Court*, amount was demanded by issuing threat that in case the complainant happened to entertain more than 25 guests in the marriage-feast of his niece, the matter shall be reported to the authority concerned. The learned Judicial Commissioner, held that no offence of extortion is made out since the threat issued was not to cause "injury" as defined in Section 44 of the IPC.

16. The same view is discernible from the judgment of the Madras High Court in *Naveen @ L. Srinivasan vs. State rep. By The Assistant Commissioner of Police Central Crime Branch, Chennai in CrI.O.P. 24374 of 2008 and connected matters*. The Madras High Court articulates that to constitute injury, harm must be caused illegally. Expressing thus, the Madras High Court directed further investigation in connection with the complaint.

17. The decision of learned Single Judge of this Court in

Sharad Balkrushna Deotale vs. State of Maharashtra [2019 SCC Online Bom 305] is clearly distinguishable. Paragraph 13 of the said decision reads thus :

13. In the present case, the accused not only threatened the complainant to make any complaint to the authority but he threatened the complainant that if he fails to pay Rs. 50,000/- to him, then by influencing the Collector, houses constructed on the plots would be demolished. Because of continuous threats of the journalists/accused, the complainant agreed to pay Rs. 50,000/- to the accused. Accused was caught while accepting Rs. 10,000/- by police. Therefore, cited decision is not applicable to the case at hand.

It is clear from the factual matrix that what weigh with the learned Judge who confirmed the conviction under Section 384 of the IPC is that the accused not only threatened to lodge a complaint with the authority, he further threatened the complainant that if he fails to pay Rs. 50,000/- then by influencing the Collector (emphasis supplied), houses constructed on the plots would be demolished. The threat issued was, in the factual matrix, was to cause “injury” as defined in Section 44 of the IPC.

18. In my considered view, even if, the entire material placed

on record is taken at face value, while the conduct of the accused may be deplorable, it is extremely doubtful whether an offence of extortion is made out. That apart, the only material on record is a statement recorded two years after the alleged incident. Irrefutably, there is no corroborative material on record. Alleged conversation is not witnessed or heard by any person other than Mr. Shalikram Baliram Bharadi. I am conscious of the legal position that in exercise of inherent powers, the Court must be slow to weigh the probative value of the material. However, a limited shifting of the material is indeed permissible. The Court would be perfectly justified in nipping the trial in bud, if on broad probabilities, the Court finds that the trial is an empty or ritualistic formality. Considering that the alleged incident occurred on 7-3-2009, and that the officer who allegedly was at the receiving end of the threat put the same on record after two years, coupled with the fact that there is no eye witness or any other corroborative evidence to support the sole testimony of Mr. Shalikram Baliram Bharadi, in my considered view, even on broad probabilities, chances of conviction, even if the entire material translates into evidence, are bleak if not non-existent.

19. In the light of the discussion supra, in exercise of inherent power under Section 482 of the Code, I quash Summary Criminal Case 1833/2011 pending in the Court of Judicial Magistrate First Class, Court No. 5, Yavatmal.

20. The application is allowed in terms of prayer clause (i) which reads thus :

(i) to call for the record of Summary Criminal Case No. 1833 of 2011 from the Court of Learned Judicial Magistrate First Class, Court No. 5, Yavatmal and the record of revision bearing Criminal Revision No. 05 of 2018 from the Court of Learned Sessions Judge, Yavatmal and after examining the same further be pleased to quash and set aside the impugned Judgments and Orders dated 02.11.2017 vide Annexure-3 and 08.01.2019 vide Annexure-4 respectively and the applicant be discharged or the prosecution be closed or quashed.

JUDGE