

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1614 OF 2018

Ramchandra Sadashiv Dimble ...Petitioner
Versus
The State Of Maharashtra And Anr. ...Respondents

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Mr. Sushil Nimbkar, Advocate for the Petitioner.

Mr. Vilas B. Tapkir, Advocate for Respondent No.2.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 15th SEPTEMBER, 2022.

PER COURT:

1. The petitioner has challenged the order dated 6th December, 2017 passed by the Sessions Court, Pune in Criminal Revision Application No. 430 of 2017 whereby the respondent No.2 has been discharged.

2. The petitioner is the original complainant. Initially the private complaint was filed by him before the Court of learned JMFC, 6th Court, Pune seeking investigation under Section 156(3) of Cr.P.C. alleging that the respondent/accused have committed offences punishable under Sections 384, 385, 388, 389, 426, 427, 420, 406, & 511 of Indian Penal Code (for short 'IPC'). The complaint was filed on 28.04.2015. The petitioner/complainant

had alleged that the complainant is conducting money lending in accordance with Bombay Money Lenders Act and also conducting business of share transactions, purchase and sale of the land etc. The accused was acquainted with the complainant from 2005 to 2012 and executed transactions with the complainant. Share transactions were executed in the year 2008-09 and accused was liable to pay dues of Rs.5,64,30,960/- to the complaint. The accused gave proposal to the complainant about sale of the property situated at Lonikand admeasuring 13.57R out of Gat No.173 owned by him for being purchased by complainant. Proposal was accepted by complainant. The Sale Deeds were executed. Documents were registered with the Sub-Registrar. Amount of Rs.4,59,75,000/- was credited and claim was reduced. Since 2009 to 2015 there was rise in price of the landed property, hence he decided to sell the land admeasuring Gat No.173 by all the owners of land. Memorandum of Understanding was executed between the owners. The accused forwarded notice dated 30.03.2015 and demanded amount. The accused was entitled for such amount. Vide said notice, the accused threatened the complainant of dire consequences, if the demands are not fulfilled. The accused had tried to extort money from the complainant. The act amounts to extortion. The complainant approached the police, however, police

did not take cognizance. Hence, private complaint was filed.

3. The complaint was heard by learned Magistrate. Vide order dated 28.04.2015 it was observed that no case is made out for investigation under Section 156(3) of Cr.P.C. The complainant was granted liberty to remain present for recording verification. The complainant appeared before the Court on 11.08.2015 and filed withdrawal pursis. The Court passed order that in view of pursis, case is withdrawn and accordingly disposed off.

4. The petitioner lodged the FIR on 02.08.2015 for offences under Section 385 and 506 of Indian Penal Code. The FIR was based on the same allegations which were reflected in the private complaint. The investigation proceeded and the charge-sheet is filed.

5. The respondent No.2 filed application before the learned JMFC which was rejected vide order dated 21.08.2017. Thereafter, the Respondent No.2 preferred Criminal Revision Application No. 430 of 2017 before Sessions Court. The said application was allowed vide order dated 06.12.2017. The order passed by the learned Magistrate dated 21.08.2017 was set aside and the respondent was discharged from the said proceedings.

6. The petitioner/complainant is aggrieved by the order dated 06.12.2017 discharging the respondent/accused.

7. Learned Advocate for the petitioner submitted that the order passed by the Sessions Court is contrary to law. Prima facie case was made out for offences punishable under Sections 385 and 506 of IPC. The learned Sessions Judge has ignored the evidence on record. There were no dues from complainant towards accused. In spite of that the accused forwarded the notice and threatened the complainant to cause injury. The statements of witnesses supports prosecution. Thus, ingredients to constitute the offence under Section 385 and 506 of IPC were made out. The order passed by the Sessions Court indicate that the Court was influenced by the fact that the complainant had initially filed a private complaint and prayer under Section 156 was refused. Merely on account of approaching the Court seeking investigation under Section 156(3) of Cr.PC. And refusal of prayer under Section 156(3) there is no legal bar for registration of FIR. To constitute offence under Section 385 of IPC what is required is threat to deliver the property. It is not necessary that the property should be actually delivered. Section 44 of Indian Penal Code refers to definition of injury. The injury need not be physical and need not

be caused. The notice issued by the accused and the acts committed by the accused were sufficient to proceed against the accused for the offences punishable under Sections 385 & 506 of Indian Penal Code. Reliance is placed on the decision of the Hon'ble Supreme Court decision in Criminal Appeal No.2021 of 2019 reported in 2015 ALL MR (Cri) 3712 (SC) and submitted that, the fact that the complainant had approached the Court by filing private complaint, wherein the directions for investigation were refused would not be an impediment to register the FIR and proceed with the investigation. In the present case charge-sheet was filed. No case for discharge was made out.

8. Learned Advocate for respondent No.2 submitted that, on reading the FIR and the statement which form part of charge-sheet, no offence under Sections 385 and 506 of Indian Penal Code are made out. The Respondent No.2 had issued the notice to the petitioner/complainant claiming his dues and thereafter, he had lodged the complaint with the police. Issuing notice demanding the dues would not in a manner to constitute the offence of extortion. The registration of FIR was the abuse of process of law. The FIR does not disclose the offence under Section 385 of Indian Penal Code. Initially the complainant filed a private complaint and

after the prayer for investigation was refused, he has approached the Police and the FIR was registered. The fact that the complainant had filed a private complaint and concerned Court has refused to issue directions under Section 156(3) of Cr.P.C. was suppressed while lodging the FIR. The charge-sheet does not constitute any ingredients of the offence under Section 386 of Indian Penal Code. The learned Sessions Judge had rightly discharged the accused. The trial Court had committed an error in rejecting the application for discharge. On 21.04.2015, the petitioner had filed the complaint before the Police alleging that by sending legal notice, the accused is demanding ransom from the petitioner, thereafter, he filed private complaint before the Court of learned JMFC. By no stretch of imagination, the alleged offences are made out against Respondent No.2. The Respondent No.2 had filed a complaint against the investigating officer before the Divisional Police Authority. After hearing the Respondent No.2 and investigating officers, the authority had passed order dated 18.04.2018 and it was held that the arrest of Respondent No.2 in C.R. No.229 of 2015 was unjust and improper and in contravention of the provisions of law. The prosecution did not deem it fit to challenge the order passed by the Sessions Court. He relied upon the decision of the Apex Court in the case of **Vijay Kumar Ghai and**

Ors. V/s. The State of West Bengal and Others, delivered in SLP (Cri.) 10951 of 2019.

9. Learned APP supported the prosecution case.

10. On perusal of documents on record it is apparent that, there were transactions between the complainant and the accused. The respondent No.2 had issued notice to the petitioner dated 30.03.2015 through his Advocate. In the said notice it was claimed that the petitioner and others named in the said notice were conducting business of buying and selling shares on behalf of the customers. The respondent No.2 is one of the customer. He has to receive Rs.14,28,88,883 till 31.03.2015 towards the sale proceeds of Rs.4,59,75,000/- + registration fees and stamp duty charges of Rs.19,59,030/- + weekly compounding interest from the date of transaction till 31.03.2015 amounting to Rs.9,49,54,853/-. As per weekly statement up to 31.03.2013 Rs.6,98,38,031/- to be recovered from the respondent. By maintaining to two separate books of accounts and by not giving credits, the respondent No.2 is cheated to the extent of Rs.4,25,54,182/- which they are liable to pay to Respondent No.2. It was also stated that it is learnt that, with an intent to defeat and delay the payment of respondent No.2, the complainant and others have fraudulently signed Memorandum

of Understanding with Swapnil Shelar and were transferring development rights of land admeasuring 130 Are out of land in question at Lonikand at the rate of 5,51,000/- per Are and that they will receive the payment from 30.04.2015 to 30.09.2015. In the concluding paragraphs it was stated that legal action would be initiated against the petitioner and others. The complaint would be filed against them under the provision of law. The petitioner filed a complaint with Police on 21.04.2015 and thereafter, filed a private complaint. The learned JMFC has refused direction under Section 156(3) of Cr.P.C. Thereafter, the FIR was registered for the aforesaid offences. The respondent No.2 was arrested and released on bail thereafter charge-sheet was filed. From the FIR it appears that the allegations in the FIR and in the private complaint are same. The FIR does not refer to the investigation of the direction under Section 156(3) by the Magistrate. After the Court refused directions under Section 156(3), the complainant approached Police. Apparently order of learned Magistrate was not pointed out to Police. Assuming that the Police has power to register FIR in spite of refusal to direct investigation by Court, in the present case, Police ought not to have registered FIR as there was no evidence to constitute alleged offences. The charge-sheet is placed on record. On perusal of the statement of complainant and other witnesses

which forms the part of the charge-sheet, I do not find that the offences under Section 385 & 506 are made out. Section 383 of Indian Penal Code defines extortion. Section 384 provides that description for a term for punishment for extortion. Section 385 relates to putting any person in fear, or attempts to put any person in fear in order to commit an extortion. By no stretch of imagination it can be said that ingredients to constitute the aforesaid offence are present in the impugned proceedings. The learned counsel for petitioner had submitted that the learned Sessions Judge was merely influenced by the fact that the learned Magistrate had refused investigation under Section 156(3) of Cr.P.C. and thereafter, the FIR was registered. On perusal of the impugned order passed by the Sessions Court in Paragraph – 5 it is observed that sum and substance of this case is that there was agreement for development with Swapnil Shelar. Thereafter, on 30.03.2015, the respondents issued notice through his Advocate, due to which this complaint was lodged. The complaint was lodged on 2.08.2015 by the petitioner. On plain reading of the complaint, no offence is made out. The respondent had issued notice on 30.03.2015 and contented that the complainant is directed to pay Rs.4,25,54,182/- and interest at the rate of 18% per annum till 31.01.2015. The Court perused the entire record

including the notice dated 30.03.2015. The Court has indeed made a reference of order passed by the learned JMFC refusing investigation under Section 156(3), thus, the Court has considered the entire material on record and arrived at the conclusion as reflected in the impugned order.

11. Considering the aforesaid facts and circumstances, I do not find any infirmity in the impugned order. Hence, no case is made out to entertain this petition.

ORDER

Criminal Writ Petition No.1614 of 2018 is rejected and disposed of accordingly.

(PRAKASH D. NAIK, J.)