

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPEAL NO.104 OF 2019 WITH
CRIMINAL APPLICATION NO.3043 OF 2022**

Manoj s/o Prabhakar Lohar,
Age 45 years, Occu. Service,
R/o Thane, Taluka and
District Thane

... APPELLANT

VERSUS

1. The State of Maharashtra
Copy to be served on the
Public Prosecutor, High Court of
Bombay, Bench at Aurangabad

2. Dr. Uttamrao Dhanaji Mahajan,
Age 56 years, Occu. Service,
R/o Chalisgaon, Tq. Chalisgaon
District Jalgaon

... RESPONDENTS

.....

Mr. N.S. Ghanekar, Advocate for appellant
Mr. R.V. Dasalkar, A.P.P. for respondent No.1
Mr. D.S. Bagul, Advocate for respondent No.2.

.....

WITH

**CRIMINAL APPLICATION NO.1939 OF 2021 IN
CRIMINAL APPEAL NO.104 OF 2019**

Dr. Uttamrao Dhanaji Mahajan,
Age 56 years, Occu. Service,
R/o Chalisgaon, Tq. Chalisgaon,
District Jalgaon

... APPLICANT

VERSUS

1. Manoj Prabhakar Lohar,

Age Major, Occu. Nil
R/o 1701, Crystal Building,
Vasant Lawn, thane (W),
Tq. Thane, Dist. Thane

2. The State of Maharashtra
Police Station Officer,
Police Station, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon ... **RESPONDENT**

.....

Mr. D.S. Bagul, Advocate for applicant
Mr. N.S. Ghanekar, Advocate for respondent No.1.
Mr. R.V. Dasalkar, A.P.P. for respondent No.2

.....

WITH

CRIMINAL APPEAL NO.212 OF 2019

Dhiraj s/o Yashwant Yeole
Age 54 years, Occu. Social
and Political Worker
R/o Sant Namdeo Nagar,
Pawarwadi, Chalisgaon,
Taluka Chalisgaon, Dist. Jalgaon
(At present the appellant is in
Yerwada Central Prison, Yerwada,
Pune, Taluka and District Pune) ... **APPELLANT**

VERSUS

The State of Maharashtra
Through the Police Station Officer,
Chalisgaon Police Station, Chalisgaon,
Taluka Chalisgaon, Dist. Jalgaon
(Notice to the respondent to be served
through the Public Prosecutor,
High Court of Bombay,
Bench at Aurangabad) ... **RESPONDENT**

.....

Mr. Rajendrraa S. Deshmukh, Senior Advocate with
Mr. Devang R. Deshmukh, Advocate for appellant

Mr. R.V. Dasalkar, A.P.P. for respondent

.....

WITH

CRIMINAL APPEAL NO.468 OF 2022

The State of Maharashtra
through Police Station Officer,
Chalisgaon Police Station

... APPELLANT

VERSUS

Vishwas Raosaheb Nimbalkar,
Age 59 years, Occu. Service,
R/o Chalisgaon, Tq. Chalisgaon,
District Jalgaon

... RESPONDENT

.....

Mr. R.V. Dasalkar, A.P.P. for appellant
Mr. S.J. Salunke, Advocate for respondent

.....

**CORAM : R.G. AVACHAT AND
R.M. JOSHI, JJ.**

Date of reserving judgment : 23rd December, 2022.

Date of pronouncing judgment : 21st April, 2023.

J U D G M E N T :

Criminal Application No.1939/2021 is allowed. The applicant Dr. Uttamrao Dhanaji Mahajan be added as respondent No.2 in Criminal Appeal No.104/2019.

These three appeals are being decided by this common judgment since they are interconnected. The

challenge in these three appeals is to a judgment and order dated 19/1/2019, passed by the Court of Additional Sessions Judge, Jalgaon in Sessions Case No.131/2012, whereunder the appellants Manoj and Dhiraj (in Criminal Appeal No.104/2019 and Criminal Appeal No.212/2019) have been convicted for the offences punishable under Sections 342, 346, 348, 364-A, 385, 506 read with Section 34 of the Indian Penal Code. The appellant Manoj has also been convicted for the offence punishable under Section 504 of the Indian Penal Code while the respondent in Criminal Appeal No.468/2022 has been acquitted. The details of the order of conviction and acquittal impugned herein are shown in the chart below :-

Sr. No.	Name of the appellant/ accused	Charge	Order of conviction
1.	Manoj Prabhakar Lohar and Dhiraj Yashwant Yeole	166, 342, 346, 348, 364-A, 385, 166-A, 504, 506 read with 34 IPC	S.342 r/w S.34 IPC R.I. for one year and to pay fine of Rs.500/- each, in default S.I. for 15 days
			S.346 r/w S.34 I.P.C. R.I. for one year and to pay fine of Rs.500/- each, in default S.I. for 15 days
			S.348 r/w S.34 I.P.C. R.I. for two years and to pay fine of Rs.1000/- each, in default S.I. for one month
			S. 364-A r/w 34 I.P.C. Imprisonment for life and fine of Rs.5000/- each, in

			default S.I. for five months.
			S.385 r/w S. 34 I.P.C. R.I. for one year and to pay fine of Rs.500/- each, in default S.I. for 15 days
			S.506 r/w S.34 I.P.C. R.I. for one year and to pay fine of Rs.500/- each, in default S.I. for 15 days
2.	Manoj Prabhakar Lohar		S.504 I.P.C. R.I. for one year and fine of Rs.500/-, in default S.I. for 15 days.
	All the substantive sentences have been directed to run concurrently.		
3.	Vishwas Raosaheb Nimbalkar	166, 342, 346, 348, 364-A, 385, 166-A, 504, 506 read with 34 IPC	Acquitted

2. The facts in brief giving rise to the present appeals are as follows :

The appellant Manoj (Criminal Appeal No.104/2019) was serving as Additional Superintendent of Police, Chalisgaon during the relevant time. While the respondent Vishwas (Criminal Appeal No.468/2022) was serving as Police Sub-Inspector with Chalisgaon Police Station. The appellant Dhiraj (Criminal Appeal No.212/2019) was resident of Chalisgaon. He

was in politics and a social worker as well.

3. P.W.1 Uttamrao was the Principal of Ayurvedic College, Chalisgaon. Kisan Dnyanoday Mandal is an educational institute. Purushottam Patel and Mannubhai Patel were in the business of building and construction. They were partners of the firm – Shivam Construction. Work of construction of hostel and staff quarters of the College run by Kisan Dnyanoday Mandal was assigned by P.W.1 Dr. Uttamrao to Purushottam and Mannubhai Patel in the year 2004-2005.

4. It is the case of the prosecution that, the respondent Vishwas, in police uniform, accompanied by two constables in civil dress, met P.W.1 Uttamrao near Dhanvantari Hospital at 11.00 a.m. on 30/6/2009. The respondent informed him to have been called by appellant Manoj to his office. There was a public meeting of Smt. Sonia Gandhi scheduled at Malegaon on 30/6/2009. P.W.1 Dr. Uttamrao being the leader of Congress Party, Chalisgaon, was supposed to attend the said meeting, taking along with him local members of the Congress Party. He, therefore, requested the respondent to allow him to visit appellant Manoj on his return from Malegaon. The respondent did not listen. He made P.W.1 Uttamrao sit on

motorbike and brought him to the office of Additional Superintendent of Police (for short, Addl.S.P.), Chalisgaon. The appellant Manoj scolded and abused P.W.1 Uttamrao. He told Uttamrao to have received many complaints against him. Uttamrao was given for reading a complaint made by Purushottam Patel. Both Purushottam and Mannubhai were present in the office of Addl.S.P. They claimed that a sum of Rs.21 Lakhs was due from P.W.1 Uttamrao. It was their case that the work of construction was given to them for Rs.1,05,37,000/-. Dr. Uttamrao, in the official record of the Trust, showed the entire amount to have been paid to Shivam Construction. He had in fact paid Rs.85 Lakhs only and thus, misappropriated a sum of Rs.21 Lakhs. Appellant Manoj threatened Dr. Uttamrao of keeping him behind the bars and register a cognizable case against him.

5. Appellant Dhiraj happened to visit the office of Addl.S.P. He had acquaintance with both Dr. Uttamrao and appellant Manoj. He obtained Dr. Uttamrao's nod to act as a go-between. He had a talk with appellant Manoj alone and then he informed Dr. Uttamrao that to settle the matter, he would have to grease palm of Manoj. He informed Uttamrao that Manoj was demanding Rs.60 Lakhs besides payment of Rs.21

Lakhs to Patel Brothers. Uttamrao was compelled to send for papers relating to the construction work and a cheque book as well. He was forced to issue three cheques of Rs.21 Lakhs in favour of Patel Brothers. Appellant Manoj ultimately reduced the demand to Rs.25 Lakhs. He asked Dr. Uttamrao to make an arrangement of that much amount by evening, failing which a crime would be registered against him. Uttamrao, therefore, contacted his father-in-law (P.W.10) Digambar. By that time, it was evening. P.W.10 Digambar told Uttamrao his inability to arrange that much amount with such a short notice and during night time as well. Appellant Manoj, therefore, gave Uttamrao time until next day morning to meet his demand. He asked the respondent Vishwas and appellant Dhiraj to keep Uttamrao in their custody overnight. He also asked Uttamrao if the amount is arranged, the same be paid to the appellant Dhiraj. He also instructed both of them to release Uttamrao once the amount was received.

6. It is also the case of the prosecution that, all of them left the office little past 11.00 p.m. Both the respondent Vishwas and the appellant Dhiraj first took Uttamrao to the house of one of the relations of the appellant Dhiraj. Uttamrao was detained there until 2.00 a.m. Then Uttamrao was shifted

to the house of appellant (Dhiraj). P.W.2 Manoj, son of Uttamrao, returned Chalisgaon from Nagpur. He learnt his father to have been detained. Uttamrao was again brought to the office of the Addl.S.P. by little past 11.00 a.m. on 1st June. Appellant Manoj gave Uttamrao time up to 3.00 p.m. to meet his demand of Rs.25 Lakhs. P.W.2 Manoj visited the office of appellant Manoj and requested for release of his father Uttamrao. P.W.2 Manoj had contacted Superintendent of Police, Jalgaon (P.W.13 Rastogi). A written complaint was lodged with the Superintendent of Police, Jalgaon. Shri Rastogi then made a telephonic conversation with appellant Manoj, Uttamrao, respondent Vishwas and P.W.11 Akhare. Appellant Manoj then allowed Uttamrao to go home. He requested Uttamrao not to aggravate the issue and asked him to see that everything was Ok.

7. On the following day, P.W.11 Akhare, P.I. Chalisgaon Police Station took both Uttamrao and P.W.2 Manoj to Superintendent of Police, Jalgaon. P.W.13 Rastogi then visited Chalisgaon to make enquiry into the matter. P.W.1 Uttamrao lodged a written First Information Report. Since the crime was not registered, he had to approach the High Court by filing a Criminal Writ Petition. Ultimately, crime vide C.R. No.145/2009

came to be registered initially for offences punishable under Sections 347, 385 read with Section 34 of the Indian Penal Code. Later on Section 364-A also came to be invoked. Since the high ranking police officer was involved in the crime, the investigation thereof was entrusted with C.I.D.

In short, the case of the prosecution is that, the appellants and the respondent, in furtherance of their common intention, abducted Dr. Uttamrao for ransom and wrongfully detained/ confined him from 11.00 a.m. of 30th June to 2.00 a.m. of 1st July, and thereby committed offence punishable under Sections 342, 346, 348, 364-A, 385, 504 and 506 read with Section 34 of the Indian Penal Code.

8. The concerned police officers did investigation of the crime. All the papers of investigation were submitted to the State Government in the Ministry of Home Affairs for obtaining sanction for prosecution of the appellant Manoj and the respondent. The competent authority granted sanction (Exh.460) for prosecution. Again a proposal was moved for sanction to prosecute these police officers for offence punishable under Section 364-A of the Indian Penal Code. A revised sanction for prosecution was thus accorded. Both the

appellants and the respondent came to be proceeded against by filing a charge sheet. The case was committed to the Court of Sessions for trial in accordance with law. Learned Additional Sessions Judge framed the charge (Exh.350) for offences punishable under Sections 166, 342, 346, 348, 364-A, 385, 504 and 506 read with Section 34 of the Indian Penal Code.

9. The prosecution examined 16 witnesses and produced in evidence certain documents to establish the charge. The appellant Manoj examined 2 witnesses in his defence. On appreciation of the evidence in the case, the learned Additional Sessions Judge passed the judgment impugned herein. Hence these appeals.

10. The defence of appellant Manoj is that, P.W.11 Akhare and P.W.13 Rastogi had a reason to falsely implicate him in the present crime. He had withdrawn investigation of the crime registered against Peoples Co-operative Bank from Shri Akhare and entrusted the same with Dy. Superintendent of Police, Chalisgaon. The withdrawal of investigation from Shri Akhare was neither informed to Shri Rastogi nor his prior permission thereto was obtained. He had, therefore, grudge against him.

11. It is the defence of appellant Dhiraj that, on request of Dr. Uttamrao, he intervened in the matter. He happened to visit the office of Addl.S.P. to extend appellant Manoj marriage invitation of his nephew. He was no way involved in the alleged crime.

12. It is the defence of respondent Vishwas that, what he did was in discharge of his official duty. He obeyed the lawful directions of his officer – appellant Manoj.

13. Mr. Ghanekar, the learned counsel for the appellant Manoj first took us through the definition of offence of kidnapping for ransom, Section 364-A of the IPC. According to him, there is no evidence to indicate P.W.1 Uttamrao was taken to Addl.S.P.'s office either by deceitful means or force. According to him, if any one of the ingredients of offence punishable under Section 364-A of the Indian Penal Code is missing, the prosecution has to be said to have failed to make out the said offence. The learned counsel took us through the evidence of P.W.1 Uttamrao to submit that this witness thought it proper of having been called by police as Shivam Construction had filed complaint. He felt the that he shall co-operate with

the investigation. He convinced his party workers that he would stay put for investigation. They may leave for Malegaon for attending the public meeting.

14. Evidence of P.W.2 Manoj was also adverted to, to suggest that he was informed by his father P.W.1 Uttamrao that he had been called to the office of appellant Manoj in relation to construction contract of Purushottam Patel. He asked him about the documents relating to the said contract. Evidence of P.W.6 Gokul was also adverted to submit that, respondent Vishwas had requested P.W.1 Purushottam to accompany him to the office of Addl.S.P. since he was called.

15. The learned counsel then relied on Section 349 of the IPC to submit that the evidence of the prosecution did not make out a case of use of force to take P.W.1 Uttamrao to the office of Addl.S.P. Relying on the judgment of Apex Court in case of **Philips Fadrick D'Souza & anr. Vs. State of Maharashtra [(2008) 4 Mh.L.J. (Cri) 380]**, he would submit that, it was necessary for the prosecution to prove the accused abducted P.W.1 Uttamrao in order to meet the demand of ransom. If the object of demanding ransom is not at the time of abduction, Section 364-A of the Indian Penal Code has no application. The

appellant Manoj had recently joined as Addl. S.P., Chalisgaon and, therefore, had no acquaintance with the people of Chalisgaon.

16. A complaint had been received from Shivam Construction. In spite of having carried out construction, P.W.1 Uttamrao did not pay Shivam Construction entire cost of construction. It was P.W.1 Uttamrao who had committed the offence of cheating, misappropriation and breach of trust. He would further submit that, P.W.4 Nitin had brought the papers relating to the construction work. Discussion between P.W.1 Uttamrao on one hand and partners of Shivam Construction on the other took place in the office itself. A settlement was worked out. Even a writing to that effect was made. P.W.1 Uttamrao issued three cheques towards repayment of the dues to Shivam Construction. If the object was to demand ransom, there would not have been an enquiry into the matter. The prosecution witnesses namely P.W.11 Akhare, P.W.13 Rastogi and P.W.16 Mitkar were in the know of these facts. Still the documents relating to the construction work of the settlement arrived at have been suppressed from the Court only with an ulterior motive. Both, P.W.11 Akhare and P.W.13 Rastogi were unhappy with the appellant Manoj. They did get a ground to

implicate him in the offence in question.

17. According to learned counsel, there is nothing in evidence to indicate P.W.1 Uttamrao was assaulted or threatened to cause him hurt or death. The threat of putting him in jail and carrying investigation of all branches of his institute and register crime against him does not come under the purview of Section 364-A of the Indian Penal Code. For this, the learned counsel relies on Section 319 of the Indian Penal Code. There is material omission in the evidence to suggest that the respondent had threatened P.W.1 Uttamrao with a revolver if he tried to run away. According to learned counsel, evidence of demand of Rs.25 Lakhs by appellant Manoj was also an afterthought theory brought in only with a view to implicate him in serious offence.

18. Case of P.W.1 Uttamrao that he was relieved of his cell phone was falsified by the CDRs on record. According to learned counsel, there is a delay in lodging of the F.I.R. The F.I.R. has been lodged after deliberations and on a legal advice. The F.I.R. in fact was drafted by an Advocate in Aurangabad. It was faxed from a shop "Mauli Xerox" (Exh.451). P.W.2 Manoj had faxed one complaint to the Superintendent of Police P.W.13

Rastogi on 1st July (Exh.450). In this complaint, there is reference only to a demand of Rs.21 Lakhs made by the partners of Shivam Construction. The said complaint is silent about the demand of Rs.25 Lakhs.

19. According to learned counsel, there is evidence of P.W.4 Anil to indicate that, appellant Manoj had left his office by 10.30 p.m. This falsifies the prosecution theory that he (appellant Manoj) had brought P.W.1 Uttamrao down the stairs of his office and gave him in custody of appellant Dhiraj and respondent Vishwas for detaining him until the demand of Rs.25 Lakhs was met. Number of inconsistencies in the evidence of the prosecution witnesses were brought to the notice of this Court to submit the prosecution to have failed to make out the offence/s. According to him, Patel Brothers or any one of the staff members in the office of Addl.S.P. were material witnesses. None of them has been examined. Those who have been examined were all interested witnesses. There is no evidence that P.W.10 Digambar had in fact arranged Rs.25 Lakhs for being paid to appellant Manoj. No witness has been examined to show that he was called to lend some amount to make up Rs.25 Lakhs. According to learned counsel, what appellant Manoj did was in exercise of his authority under Section 36 of

the Code of Criminal Procedure.

20. On the question of sanction for prosecution of the appellant, learned counsel would submit that, original file of the sanction was not produced before the Court. It was stated to have been gutted in fire, that broke out at Mantralaya. Nothing is, however, placed on record in proof thereof. Appellant Manoj in his defence, placed on record documents showing his pay-scale to be more than Rs.10,650/-. The sanction for his prosecution, therefore, ought to have been granted by the Chief Minister. The same has not happened in the present case. For granting revised sanction after invocation of Section 364-A of the Indian Penal Code, statements of very same witnesses were re-recorded without any change.

21. On the question of daily diary of the respondent (Exh.472), he would submit that, the same has not been duly proved. The said document was got up by the respondent Vishwas as an evidence in his defence. A weekly diary maintained by a police officer is his private document. It is neither a station diary entry nor a case diary in terms of Section 172 of the Code of Criminal Procedure. Relevant provisions of Police Manual were also adverted to in this regard. According to

learned counsel, the contents of the weekly diary have not been proved, leave apart its probative value. Section 63 of the Evidence Act was also relied on.

22. The learned counsel would further submit that, there is quite a distinction between admission and confession of a co-accused. The weekly diary would not be admissible in evidence against co-accused under Section 30 of the Evidence Act. The learned counsel would further submit that, in view of Section 161 of the Maharashtra Police Act, the prosecution has not been launched within prescribed period of limitation. The act committed by the appellant Manoj could be said to be under the colour of his office and discharge of his official duty. The sanction for prosecution on record suggests non application of mind. According to learned counsel, when there is evidence suggesting the appellant Manoj to have left his office by 10.30 p.m., he is no way concerned about the happenings that took place thereafter until P.W.1 Manoj came to his office by little past 11.00 a.m. on the next day. According to learned counsel, the trial Court, based on such quality of evidence, ought not to have convicted the appellant Manoj. He, therefore, urged for allowing the appeal.

23. Learned Senior Counsel Mr. R.S. Deshmukh appearing for appellant Dhiraj adopted the submissions made by learned counsel appearing for the appellant Manoj. He would submit that the prosecution did not adduce any documentary evidence to prove the house allegedly used for confinement of P.W.1 Uttamrao was of the relative of appellant Dhiraj or owned by him. P.W.1 Uttamrao did not know this appellant before the offence in question. P.W.2 Manoj testified to have got knowledge of ownership of the houses from one Kedarsing Patil, who has not been examined. The investigating officer did not take pains to collect documentary evidence in proof of ownership of this appellant to the house wherein P.W.1 Uttamrao was allegedly confined.

P.W.13 Rastogi categorically deposed that this appellant tried to act as a Mediator with the consent of P.W.1 Uttamrao. According to learned Senior Counsel, there is delay in lodging of the F.I.R. It has been drafted by a legal eagle. Possibility of exaggeration and concoction, therefore, could not be ruled out. He would further submit that, the respondent Vishwas, who had played major role in the alleged crime, has been acquitted. This appellant is, therefore, entitled for acquittal on the ground of parity as well. The learned Senior

Counsel relied on the judgment of the Apex Court in **Jasdeep Singh @ Jassu Vs. State of Punjab (Criminal Appeal No.1584/2021 (arising out of SLP (Crl) No.11816/2019)**, which pertains to constructive criminal liability in terms of Section 34 of the Indian Penal Code.

24. Learned counsel for respondent Vishwas would submit that, in view of judgment of acquittal of the respondent, the presumption of his innocence got reinforced. The learned counsel adverted Court's attention to the evidence of P.W.1 Uttamrao and the F.I.R. (Exh.359) to submit that the respondent's name does not figure therein as a culprit. To be specific, F.I.R. was against appellants Manoj and Dhiraj only. P.W.1 Uttamrao admitted in his evidence that, this respondent being an officer of the lower rank, did follow the orders of appellant Manoj. Then he adverted to the evidence of P.W.6 Gokul, who testified that, P.W.1 Uttamrao was summoned by appellant Manoj in his office. P.W.11 Akhare also did not state anything incriminating against the respondent Vishwas.

25. P.W.13 Rastogi also admitted that the respondent Vishwas followed the orders of appellant Manoj and, therefore, he could not draw final conclusion as to whether the respondent

committed the crime in question. The enquiry report (Exh.452) submitted by P.W.13 Rastogi concludes that the respondent did nothing more than following orders of appellant Manoj. Attention of the Court was also adverted to evidence of P.W.4 Anil to show that this respondent joined Chalisgaon Police Station just 10–15 days before the alleged incident. Immediately thereafter he went on leave for few days. According to learned counsel, the trial Court, relying on Section 64 of the relevant provisions of the Maharashtra Police Act, 1951 (the Police Act), has rightly acquitted the respondent. He, therefore, urged for dismissal of the appeal against acquittal.

26. The learned A.P.P. placed on record notes of his arguments. He gave a summary of evidence of the prosecution witnesses namely P.W.1 Uttamrao, P.W.2 Manoj, P.W.3 Nitin, P.W.4 Anil, P.W.6 Gokul, P.W.10 Digambar, P.W.11 Jagdev and P.W.12 Masaji, P.W.13 Rastogi, P.W.14 Sunil Gaikwad, P.W.15 R.N. Deshmukh, Sanctioning Authority and P.W.16 Mitkar, Dy. S.P. He also relied on the judgment of the Apex Court in case of **Malleshi Vs. State of Karnataka [AIR 2004 SC 4865]** and few more authorities. According to him, the offence committed by appellant Manoj had no connection with his official duty. Sanction for his prosecution was, therefore, in fact not required.

Still, the investigating officer, to be on safer side, obtained sanction for prosecution of appellant Manoj and respondent Vishwas. The sanction has been duly proved.

27. The investigating officer has testified that, all the police papers (charge sheet) were submitted to the competent authority for obtaining sanction. He would further submit that, Section 161 of the Police Act has no application in the given facts and circumstances of the case. The learned A.P.P. reiterated the reasons given by the trial Court for convicting appellants Manoj and Dhiraj. According to him, the respondent Vishwas was only expected to follow the lawful orders of his officer. The orders given by the appellant Manoj, by no stretch of imagination could be termed to be in performance of his official duties. The respondent ought to have ignored or should not have followed illegal orders. Post 10.30 p.m. of 30th June, P.W.1 Uttamrao was in unauthorised custody of this respondent. The evidence on record undoubtedly suggests involvement of respondent Vishwas in the offence. When based on same evidence the appellants have been convicted, the respondent ought not to have been acquitted taking recourse to Section 64 of the Police Act. Learned A.P.P. ultimately urged for allowing the State's appeal against acquittal of respondent Vishwas.

28. Mr. R.N. Dhorde, learned Senior counsel and Mr. D.S. Bagul, learned counsel appearing for P.W.1 Uttamrao would submit that, even a call by police officer should be taken to be compulsion. P.W.1 Uttamrao had requested to allow him to attend a public meeting at Malegaon. He had assured to come to the office of Addl.S.P. on his return from Malegaon. Still he was made to sit on a motorbike and taken to the office. This is nothing short of an abduction. When there was independent police station for Chalisgaon city and it being not the prosecution case that Patel Brothers had first approached the said police station and cognizance of their complaint was not taken, appellant Manoj showed extra interest in the matter. The same speaks in volumes of his criminal activity. Even when P.W.1 Uttamrao issued three cheques under duress, the matter had come to an end then and there. Still he was detained overnight for no legitimate reason. The same reinforces the prosecution case that appellant Manoj wanted his demand of Rs.25 Lakhs satisfied as a condition for release of P.W.1 Uttamrao. Thus, ingredients of Section 364-A do get established.

29. P.W.13 Rastogi, a high ranking officer had no axe to

grind against the appellant Manoj. Had he any such reason, there would not have been a delay in registration of F.I.R. that too on directions of the High Court. The enquiry report submitted by P.W.13 Rastogi undoubtedly indicts appellant Manoj. According to learned Senior Counsel, the offences committed by the appellant Manoj were not in discharge of his official duties nor under the colour of his office and, therefore, there was no question of grant of sanction for prosecution or question of limitation in launching the prosecution. The learned counsel placed reliance on the following authorities to ultimately urge for dismissal of the appeals :

- 1) State of Maharashtra Vs. Narhar Rao
AIR 1966 SC 1783
- 2) State of Maharashtra Vs. Atma Ram & ors.
AIR 1966 SC 1786
- 3) D. Devaraja Vs. Owais Sabeer Hussain
(2020) 7 SCC 695
- 4) Prithipal Singh & ors. Vs. State of Punjab & ors.
(2012) 1 SCC 10
- 5) Birabal Choudhary Alias Mukhiya Jee Vs. State of Bihar
(2018) 12 SCC 440

30. Considered the submissions advanced. Let us reappreciate the evidence on record to conclude whether the

charge/s has duly been proved.

31. Offence under Section 364-A of the Indian Penal

Code: Sections 362 and 364-A of the Indian Penal Code read :

“362. Abduction.—Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

364-A. Kidnapping for ransom, etc.— Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

32. The dissection of Section 364-A indicate the prosecution to bring home the charge is required to prove the following ingredients :

- (1) that the accused kidnapped or abducted the person;
- (2) kept him under detention after such kidnapping and abduction; and

(3) that the kidnapping or abduction was for ransom.

33. The Division Bench of this Court, in case of Philips Fadrick D'Souza and Ravindra @ Balu Pandurang Kambre Vs. The State of Maharashtra & anr. (supra), has observed :

18. The offence under Section 364A is not made out only upon the commission of the unlawful act of kidnapping or abduction. The essential ingredients of the statutory provision, apart from the act of kidnapping, abduction or, as the case may be, keeping a person in detention thereafter, are a threat to cause hurt or a reasonable apprehension of such a consequence or causing death or hurt, in order to compel the payment of ransom or the doing or abstention from doing any act by the government, a foreign state, an inter governmental body or by any person. The purpose of the unlawful act is to demand ransom or to compel the doing or abstention from doing of a particular act. Kidnapping or the abduction by itself does not lead to an inference of the underlying purpose with which it was carried out. The purpose must exist at the time when the act of kidnapping or abduction takes place. Whether such a purpose existed at that time will have to be deduced from all the attendant circumstances. Events which take place prior to, at the time of and subsequent to the commission of the offence would weigh in the balance. In interpreting Section 364A the Court must be cognizant of the fact that the provision was introduced in order to deal with the serious menace posed by terrorism to the stability of civil society. Hence, while the underlying purpose, which is an ingredient of Section 364A, must demonstrably be found to

exist as the foundation of the unlawful act, the Court would not be justified in abridging the parameters of the statutory provision with reference to requirements which have not been imposed by Parliament. Situations involving kidnapping or abduction for ransom are fluid. Demands which are raised by abductors may in the very nature of things evolve as the situation progresses. The law does not prescribe that the nature of the demand for ransom be precisely spelt out when the kidnapping or abduction is carried out. So long as the unlawful act of kidnapping or abduction is carried out for the purpose of making a demand for ransom, the requirement of the section would be met. Moreover, as the Supreme Court noted, it may well happen that after the demand is made known to the victim, but before it is communicated to a third person, the accused may be arrested. That again would not detract from the circumstance that when act of kidnapping or abduction was carried out with the object and purpose of demanding ransom. A statutory provision like Section 364A must undoubtedly, like penal legislation, be construed strictly. But while construing a provision such as Section 364A the Court must be careful not to interpret it in a manner which would denude it of its legislative efficacy.

34. Let us turn to the evidence on record. There is Kisan Dnyanoday Mandal, a charitable trust. It runs educational institutions including Medical College. P.W.1 Uttamrao was the principal of Ayurvedic College, Chalisgaon. The evidence undoubtedly indicate that the said educational trust was controlled by him and his family members. His wife, at the

relevant time was the President. It is also not in dispute that in 2004-2005, the work of construction of hostel and staff quarters of the Medical College was assigned to Surat (Gujarat) based Shivam Constructions. Purushottam Patel and Mannubhai Patel were partners of the said firm.

35. There is also evidence to indicate that an agreement was entered into between Shivam Constructions on one hand and P.W.1 Dr. Uttamrao's educational institute on the other. The said agreement and the related papers have not been produced in evidence. Admittedly, Patel brothers had lodged a complaint with appellant Manoj (Exh.362) against P.W.1 Uttamrao. Perusal of the said complaint indicates that it was a claim of Patel Brothers that the cost of construction was Rs.1,05,37,880/-. They had only been paid a sum of Rs.84,56,703/-. P.W.1 Uttamrao, in the accounts of his Trust, however, shown the entire amount to have been paid to Patel Brothers.

36. It has also been alleged in the complaint that P.W.1 Uttamrao thus misappropriated a sum of Rs.21 Lakhs. It has further been averred in the said complaint that Patel Brothers had all along been making demand of the amount due to them.

P.W.1 Uttamrao had, therefore, called them to receive the amount on 15/6/2009. He, however, avoided to pay the amount for one or the other reason. Admittedly, this complaint (Exh.362) was given to P.W.1 Uttamrao for his reading while he was brought to the office of Addl.S.P. It is reiterated that, no papers relating to construction contract were produced on record although were available.

37. Section 36 of the Code of Criminal Procedure speaks of powers of superior officers of police. It provides that, police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

38. As such, the Statute authorises police officers superior in rank like appellant Manoj to have powers of the officer in-charge of a police station. True, appellant Manoj appears to have shown extra interest in the matter. Being an officer in the rank of Superintendent of Police, he ought to have forwarded the said complaint to the Chalisgaon Police Station with an endorsement directing the officer in-charge of the Police Station to look into the matter and take it to logical conclusion.

It was not the case of Patel Brothers that they had first approached the Chalisgaon Police Station and officer in-charge had refused to take cognizance of their report and therefore they had no option but to file complaint (Exh.362) in the office of appellant Manoj.

39. Be that as it may. Since the appellant Manoj had received the complaint (Exh.362), he had directed respondent Vishwas to call/ bring P.W.1 Uttamrao to his office. Respondent Vishwas accompanied by P.W.6 Gokul and one more Constable, therefore, went together. They met P.W.1 Uttamrao at Ayurvedic College. It was about 11.00 in the morning of 30th June. Respondent Vishwas told P.W.1 Uttamrao to have been called by appellant Manoj. He (P.W.1 Uttamrao) informed the respondent Vishwas that there was a public meeting of Smt. Sonia Gandhi at Malegaon. He along with Congress Party members were leaving Chalisgaon for the meeting. He was assigned the job to take party workers from Chalisgaon to Malegaon for attending the public meeting. V.I.P. Passes of the meeting were with him. He also assured Vishwas that on his return from Malegaon, he would come to the office to meet appellant Manoj. Respondent Vishwas was in police uniform. Two others in his company were in civil dress.

40. It is in evidence of P.W.1 Uttamrao that, respondent Vishwas did not listen to his request and told him to have come to take him to the office. It is further in his evidence that, respondent Vishwas made him sit on the back seat of the motorbike. Then he was taken to the office of the Addl.S.P. (appellant Manoj). It is further in his evidence that, the appellant Manoj shouted at him angrily and in police style. He was informed about the complaint made by Patels. After having gone through the complaint, P.W.1 Uttamrao informed appellant Manoj that contents therein were untrue. It was his case that, the construction work was assigned on the basis of labour charges. All the construction material was supplied by the institute of P.W.1 Uttamrao. It is further in his evidence that, appellant Manoj did not pay any heed to his say. The appellant abused him in filthy language "*Behnchod, Madarchod*". The appellant Manoj threatened him of making enquiry into the affairs of his institution. He also threatened of putting him behind the bars. The appellant Manoj also threatened P.W.1 Uttamrao that he would make him pay interest @ 2% per month on the amount due to Patel Brothers. Appellant Manoj even told respondent Vishwas to register crime against P.W.1 Uttamrao for various offences under I.P.C.

41. It is further in his evidence that, in the meanwhile, appellant Dhiraj happened to visit the said office. He told him to have acquaintance with appellant Manoj. He asked him as to whether he shall act as a Mediator. It is further in his evidence that, he was made to sit in and out of the chamber of appellant Manoj. The appellant initially made a demand of Rs.60 Lakhs. Then he reduced it to Rs.50 Lakhs and ultimately brought it down to Rs.25 Lakhs. It is further in his evidence that he was relieved of his cell phone. He was given the cell phone only to contact his staff and father-in-law so as to make arrangement of money to be paid to appellant Manoj. Admittedly, on the call of P.W.1 Uttamrao, Nitin (P.W.3), a Clerk in Ayurvedic Medical College, Chalisgaon, came with a cheque book. P.W.1 Uttamrao issued three cheques amounting to Rs.21 Lakhs in favour of Patel Brothers. True, on the following day Stop Payment instructions were issued to the concerned Bank.

42. There is evidence of P.W.4 Anil that he was the Writer Constable of respondent Vishwas. He was attached to Chalisgaon Police Station. The respondent had called him to do the paper work. Settlement between P.W.1 Uttamrao, Manoj and Patel Brothers was inked. He scribed the same. It was

about 8.30 p.m. by which Patel Brothers left with the cheques issued by P.W.1 Uttamrao. The evidence in regard to the happenings post 8.30 p.m. would be adverted later on.

43. P.W.2 Manoj, son of P.W.1 Uttamrao testified that, he was away in Nagpur. His grandfather P.W.10 Digambar informed him of his father to have been detained. It is further in his evidence that, he was scheduled to visit Mumbai directly from Nagpur. He had, however, to get down at Chalisgaon. When he went home in the early morning of 1st July, he found his father (P.W.1 Uttamrao) nowhere to be seen. The mother told him the father to have not returned home. She was worried and panic as well. It is further in his evidence that, he had asked one of the employees of the College to draft a complaint and send it to Superintendent of Police, Jalgaon.

In cross-examination, he admitted that at the time of making of the said complaint, he was not knowing that appellant Manoj had demanded Rs.25 Lakhs. In the faxed complaint, there is, therefore, no reference of demand of Rs.25 Lakhs. It is further in his evidence that, on 30th June itself he had talk with his father (P.W.1 Uttamrao) and Clerk Nitin Jadhav (P.W.3) on phone.

44. P.W.10 Digambar, the father-in-law of P.W.1 Uttamrao testified that, he was asked to arrange for Rs.25 Lakhs to be paid to appellant Manoj. Since he received the call in that regard somewhat late in the evening, he asked P.W.1 Uttamrao to buy some time to pay the amount. He assured to collect the money by following morning. It is in his evidence that he was to withdraw some amount from the Bank Accounts. He collected some cash from petrol Pump, also borrowed some money from his friends. There is, however, no evidence to reinforce his claim. It is further in his evidence that, on receipt of a call from P.W.1 Uttamrao, he rushed to Chalisgaon from his native – Shirpur. It was by 11.00 p.m., he saw respondent Vishwas and both the appellants brought down P.W.1 Uttamrao from the office of Addl.S.P. He did not recognize that one of them was appellant Manoj. He, however, learnt the same later on.

45. Since the Court is addressing on the offence punishable under Section 364-A of the Indian Penal Code, it proposes to refer to the further evidence at a later stage while appreciating evidence in relation to the other offences. Suffice it to say that there is evidence to indicate that P.W.2 Manoj had

made a telephone call to Superintendent of Police, P.W.13 Rastogi, informing his father to have been detained. P.W.13 Rastogi, in turn, contacted respondent Vishwas. He even talked to appellant Manoj and P.W.11 Akhare. P.W.13 Rastogi, a high ranking police officer, testified that, he talked with P.W.1 Uttamrao while he was in the office of appellant Manoj. He realised P.W.1 Uttamrao to have not been coherent and unable to speak his mind freely.

46. There is evidence of P.W.1 Uttamrao that while he was responding to the call of P.W.13 Rastogi, appellant Manoj and respondent Vishwas had asked him to tell Superintendent of Police that he was Ok. P.W.13 Rastogi's evidence is also there to indicate that appellant Manoj told him that the matter was settled the previous day. Respondent Vishwas told P.W.13-Rastogi that P.W.1 Uttamrao was not in the office of Addl.S.P. while he (P.W.13 Rastogi) made a call by 1.00 p.m. on 1st July. He further told P.W.13 Rastogi that P.W.1 Uttamrao was just arriving to the office. The evidence undoubtedly indicate that P.W.1 Uttamrao was very much in the office of Addl.S.P. The respondent lied that he (P.W.1 Uttamrao) was just arriving in the office. P.W.2 Manoj had already contacted P.W.13 Rastogi, informing his father to have still been in the office of Addl.S.P.

It was only on the intervention of the Superintendent of Police, P.W.1 Uttamrao was allowed to go home on 1st July. P.W.13 Rastogi testified that, he had asked P.W.1 Uttamrao and his son P.W.2 Manoj to visit his office if they have any grievance. It is further in his evidence that, he had asked P.W.11 Akhare to tell appellant Manoj not to make any further enquiry in the matter without his permission.

47. P.W.11 Akhare testified to have conveyed P.W.13 Rastogi's message to the appellant Manoj. It is further in his evidence that, it was he who took P.W.1 Uttamrao and his son P.W.2 Manoj to the office of Superintendent of Police on the following day. There is further evidence to indicate that, in the office of Superintendent of Police both, P.W.1 Uttamrao and his son P.W.2 Manoj put up their grievance. It is also in his evidence that, P.W.13 Rastogi, therefore, visited Chalisgaon. He initiated enquiry into the matter. He made a station diary entry (Exh.401) about his visit in that regard. It has to be stated here itself that, had really P.W.13 Rastogi wanted to teach appellant Manoj a lesson, he would have immediately directed P.W.11 Akhare to register crime against appellant Manoj. The station diary has been in the handwriting of P.W.13 Rastogi (Superintendent of Police) himself. It has been mentioned

therein that, he had received a phone call of P.W.2 Manoj (son of P.W.1 Uttamrao) in the afternoon on the previous day (1st of July), both P.W.1 Uttamrao and P.W.2 Manoj met him (P.W.13 Rastogi) in his office at Jalgaon by 4.30 p.m. P.W.1 Uttamrao complained that he was wrongfully confined and threatened of registration of a criminal case against him by Manoj Lohar (appellant) on the pretext of some enquiry into the complaint of Purushottambhai Patel. This he says was done for extracting money from him. Before leaving Jalgaon for Chalisgaon, he discussed the matter with his senior officers viz. D.I.G. (Law & Order), I.G.P., Nashik and Addl.D.G.

48. It is true that, there is evidence to indicate that appellant Manoj had withdrawn from P.W.11 Akhare investigation of Peoples Bank, Chalisgaon and entrusted the same with local Dy. S.P. P.W.11 Akhare had, therefore, reason to be unhappy thereby. P.W.13 Rastogi also admitted that, he was not pleased by act of appellant Manoj withdrawing investigation from P.W.11 Akhare since according to him it was a practice that either a nod of Superintendent of Police is obtained before transferring investigation from one officer to the other or at least an intimation thereof is given to the Superintendent of Police. Nothing of that sort happened in that

case. On appreciation of the entire evidence on record, this Court finds that, both P.W.11 Akhare and P.W.13 Rastogi did nothing adverse to the interest of the appellant Manoj in the investigation of the present crime, except discharging their duties. It is reiterated that, P.W.13 Rastogi could have registered a crime against appellant Manoj no sooner a complaint (Exh.362) was received by him. The F.I.R. in the case came to be registered only after order in that regard was passed by the High Court.

49. P.W.4 Anil was the Writer Constable. He attended the office of Addl.S.P. on call by the respondent. It is he who drafted the settlement arrived at between Patels and P.W.1 Uttamrao. True, the contents thereof are said to have been dictated by the respondent.

50. It was P.W.6 Gokul who had accompanied respondent Vishwas to take P.W.1 Uttamrao to the office of Addl.S.P. It is in his evidence that they met P.W.1 Uttamrao just outside Dhanvantari Hospital. The respondent Vishwas told him to have been called by appellant Manoj. When P.W.1 Uttamrao told him that he was scheduled to visit Malegaon and on his return he would come to the office, respondent Vishwas

requested P.W.1 Uttamrao that he should first meet appellant Manoj and then he may go to Malegaon. It is in his evidence that, P.W.1 Uttamrao then came with them to the office of Addl.S.P. This witness was not cross-examined on behalf of the prosecution. As such, the evidence indicates that, Patel Brothers had lodged a complaint (Exh.362) with the appellant Manoj. He (appellant Manoj), therefore, asked respondent Vishwas to bring P.W.1 Uttamrao to his office. Learned counsel for the appellant Manoj relied on the judgment of the Apex Court in case of **Lalita Kumari Vs. Govt. of U.P. [LAWS (SC)-2013-11-15]** to submit that, before registration of a particular crime, to say relating to commercial transaction a preliminary enquiry was permissible. A transaction between the two was commercial one. The appellant Manoj was, therefore, justified in making enquiry into the matter before directing registration of the crime against P.W.1 Uttamrao. It is reiterated that, appellant Manoj had authority to do so.

51. P.W.3 Nitin was a person in confidence of P.W.1 Uttamrao. On Uttamrao's call, he rushed to the office of Addl. S.P. He gave him the cheque book. He had also brought papers relating to construction contract, to the office of Addl.S.P.

52. The crime in the case has been registered on 16th July. Admittedly a legal advice was taken before lodging of the F.I.R. The F.I.R. runs into 8 pages. It has been drafted on the basis of a draft prepared by a legal practitioner at Aurangabad and faxed from shop "Mauli Xerox", Aurangabad. The appellant Manoj has, therefore, every reason to contend that the things which in fact did not take place have been incorporated in the F.I.R. He has also reason to contend that, had there been a demand of Rs.25 Lakhs, the same would have been reflected in the complaint that was faxed by Manoj on 1st July to the Superintendent of Police P.W.13 Rastogi.

53. There is also no evidence to indicate P.W.10 Digambar to have really arranged for Rs.25 Lakhs for being paid to appellant Manoj. From this, the inference at the most can be drawn that the figure of Rs.25 Lakhs might have been swelled or inflated. There is evidence to indicate that, since P.W.1 Uttamrao was brought (came) to the office of Addl.S.P., he could return his own house only little past 3.30 p.m. on the following day. He was in the custody of appellant Dhiraj and respondent Vishwas on the intervening night of 30th June and 1st July until he was brought to the office of Addl. S.P. by 11.30 on

the following day i.e. on 1st July. The learned Senior Counsel was, therefore, justified in contending that, when Patel Brothers had left the office of Addl.S.P. taking three cheques with them, and settlement was inked, there was no reason for the appellant and the respondent to detain/ confine P.W.1 Uttamrao in their custody. The same suggests that, appellant Manoj wanted money to be paid to him in consideration of non-registration of crime against P.W.1 Uttamrao.

54. It is true that, there is evidence to indicate that more than two crimes were registered against P.W.1 Uttamrao, the crimes related to cheating and misappropriation in relation to the running of educational institution. There is also evidence to indicate that permission to run Medical College was cancelled. He had approached the Courts of law up to the Hon'ble Supreme Court, but was unsuccessful. A defence witness was also examined to prove that P.W.1 Uttamrao had received Rs.1 Lakh underhand to grant the concerned admission to B.A.M.S. Course. He did not return the said money. The cross-examination of the said witness, however, indicates that he was paid back his money. A case of the witness was that, some amount was paid in cash. The same was not returned. It is only to be stated here, it is not that a criminal cannot be a

victim of a crime.

55. There is further evidence to indicate that appellant Manoj had left his office by 4.30 for lunch on 30th June. He came back after a while. P.W.4 Anil (Constable) testified that, appellant Manoj left his office by 10.30 p.m. on 30th June. It is also the case of the appellant Manoj that, after he left the office, he was not aware where did P.W.1 Uttamrao go or what had happened with him until he came to his office on the following day. There is some evidence in the nature of log book of appellant Manoj's vehicle to indicate that, he reached his home by 11.00 p.m. on 30th June. Whatever has been deposed to by the prosecution witnesses as regards time cannot be taken to be at a stroke of a clock.

56. P.W.1 Uttamrao was categorical to state that, by 11.00 p.m., both the appellants and the respondent brought him downstairs the office of Addl.S.P. It is further in his evidence that, appellant Manoj asked him to pay the money to appellant Dhiraj. He asked the respondent Vishwas not to let him go home unless the money was paid. It is further in the evidence of P.W.1 Uttamrao that, both the appellant Dhiraj and respondent Vishwas first took him to one house situated just

opposite the office of Addl.S.P. He realised it to be the house of relative of appellant Dhiraj. He was kept in the said house until 2.00 a.m. Before that, respondent Vishwas left for a change of dress. He came back soon. The fact that he was taken to the house of one of the relations of appellant Dhiraj is reinforced by the evidence of P.W.10 Digambar. It is in his evidence that, P.W.1 Uttamrao was taken to a nearby house in his presence. It is true that, there is evidence to indicate the friends of Uttamrao met him there and he had interaction with them. P.W.4 Anil, Constable, testified that, P.W.1 Uttamrao, respondent and appellant Dhiraj and relative of Uttamrao went to a bungalow across the road. He too followed them. On respondent's return, he (P.W.4 Anil) went to his house.

57. It is further in the evidence of P.W.1 Uttamrao that, at 2.00 midnight, the respondent Vishwas shifted him to the house of appellant Dhiraj. He was kept on the terrace of the said house. He was taken to the said house in a black car. He was made to sit in between both of them. The respondent Vishwas had a revolver tucked at his waist. It is in his evidence that, respondent told him that he had a revolver with him and the responsibility was given to him to keep it in his custody. The respondent being a police officer, is bound to be armed with

a revolver. There is nothing unusual therein. It is not the case of P.W.1 Uttamrao that the respondent had threatened him at a revolver point. This evidence has been introduced in the examination-in-chief for the first time. Statement of P.W.1 Uttamrao is silent in this regard. This Court finds this piece of evidence to have been introduced so as to aggravate nature of crime so as to cover or invoke one of the ingredients of Section 364-A of the Indian Penal Code.

58. The witness to the scene of offence panchanamas did stand by the prosecution. The panchanamas have also been duly proved by the evidence of P.W.1 Uttamrao who showed the spots. The evidence of investigating officer (P.W.16 Mitkar) reinforces the same. It was therefore, not necessary to place on record documentary evidence in proof of ownership of the places whereat Uttamrao was detained/ confined overnight.

59. Admittedly, P.W.1 Uttamrao was a political figure. He was a President of Zilla Parishad. After having realised him to have been detained, his followers took search for him. Even they could make it to the house of appellant Dhiraj. It was 11.00 a.m. in the morning of 1st July. Till then, arrangement of money was not made. Appellant Manoj was informed that

persons had started gathering. P.W.1 Uttamrao was, therefore, sent to the office of appellant Manoj on a motorbike. Even he was given extended time up to 3.30 p.m. to pay the money. As has been stated hereinabove, on intervention of P.W.13 Rastogi, he was allowed to go/ leave the office.

60. It is reiterated that, Patel Brothers had made a complaint to appellant Manoj. The complaint was in relation to a sum of Rs.21 Lakhs to have not been paid to them by P.W.1 Uttamrao. The said amount was due to them towards the construction work of the hostel and staff quarters. Appellant Manoj, therefore, under the colour of exercise of jurisdiction under Section 36 of Cr.P.C., asked his subordinate – respondent Vishwas to call/ bring P.W.1 Uttamrao to his office. It has to be assumed that, it was necessarily in connection with an enquiry into the complaint made by Patel Brothers. P.W.1 Uttamrao did not dispute Shivam Construction to have been engaged for construction work. It was his case that the work was given on labour charges basis.

61. Admittedly, no document such as construction agreement or related documents were placed on record. The construction work was completed in 2006-2007. P.W.2 Manoj,

son of Uttamrao testified that, he realised from his father that Patel Brothers were demanding Rs.21 Lakhs. It has been mentioned in his complaint to the Superintendent of Police, for about a month before the incident, Patel Brothers had made a demand of Rs.21 Lakhs. When he lodged the complaint to the Superintendent on 1st of August by 8.00 – 9.00 p.m., he did not know appellant Manoj to have made a demand of Rs.25 Lakhs. The said complaint was, therefore, silent to make mention about the demand of alleged ransom. Here P.W.2 Manoj appears to have lied, since it is in the evidence of P.W.1 Uttamrao that he had made number of calls to his son and informed about the demand of money.

62. As such, the evidence on record do not make out a case that P.W.1 Uttamrao was abducted and brought to the office of Addl.S.P. only with a view to compel him to pay ransom. There is also no evidence to indicate that P.W.1 Uttamrao was put in fear of his death or hurt.

63. It is true that, P.W.10 Digambar testified in his evidence that P.W.2 Manoj had made a call to the officer and then informed him that if the demand was not met, there would be encounter of P.W.1 Uttamrao. Here, the identity of the said

officer has neither been disclosed nor proved. This piece of evidence has also been introduced to aggravate seriousness of the incident.

64. As such, the prosecution evidence fell short to make out a case that P.W.1 Uttamrao was either compelled or with deceitful means brought to the office of Addl.S.P. His own evidence indicates that he was called to the office of Addl.S.P. in connection with the complaint lodged by Patel Brothers.

65. It is already observed that, evidence regarding threat of encounter was afterthought and evidence regarding thereto was introduced with a view to make the offence serious. The fact, however, remains that, after the Patel Brothers were issued the cheques by 8.30 p.m. on 30/6/2009, there was no reason for appellant Manoj, Dhiraj to detain/ confine P.W.1 Uttamrao at the office of Addl.S.P. first and then at the house of a relation of appellant Dhiraj and thereafter at his own (Dhiraj's) house. As such, the offence of wrongful confinement has been made out against both the appellants and respondent Vishwas as well. The said confinement was necessarily with a view to meet some unlawful demand of money by appellant Manoj, may not be Rs.25 Lakhs exactly. Both, the appellant

Dhiraj and respondent Vishwas have been proved to have assisted appellant Manoj with a view to compel P.W.1 Uttamrao to meet his (appellant Manoj's) unlawful demand. He even asked his colleagues and Congress Party members to leave for Malegaon. He would stay behind in connection with the enquiry into the matter. There is nothing in evidence to indicate that from the beginning itself appellant Manoj had an intention to make a demand for ransom. It is only during the enquiry into the matter, he made a demand for money as a consideration for non-registration of a crime against P.W.1 Uttamrao on the basis of the complaint made by Patel Brothers. There is also nothing to suggest that the conduct of the appellant Manoj was such as to give P.W.1 Uttamrao a reasonable apprehension that he may be put to death or hurt. Admittedly, no physical hurt was caused to him. As such, ingredients of offence of kidnapping for ransom, punishable under Section 364-A are not made out on the basis of evidence on record. We are, therefore, not in agreement with the trial Court recording finding of conviction of both the appellants for offence punishable under Section 364-A of the Indian Penal Code.

66. True, on intervention of the Superintendent of Police, money did not change hands from Uttamrao to appellant

Manoj through Dhiraj. The fact, however, remains that, after Patel Brothers were issued the cheque by 8.30 p.m., on 30/6/2009, there was no reason for appellants Manoj and Dhiraj and respondent Vishwas to detain P.W.1 Uttamrao overnight and then until he was let to on intervention of Superintendent of Police.

67. True, the respondent was a lower rank police officer. The appellant Manoj was in the rank of Addl.S.P. It is the case of the respondent that he did nothing intentionally. He had no option but to obey directions of his boss (appellant Manoj). A certified copy of the weekly diary (Exh.472) of the respondent was produced in evidence. He denied it to be his diary. The said extract of the weekly diary was obtained by the investigating officer (P.W.16 Mitkar) from the Dy. S.P. Latkar. Shri Latkar has not been examined. As such, the weekly diary allegedly submitted by the respondent to his higher-ups has not been duly proved in accordance with law. The trial Court has strongly relied on the said diary. For want of proof of the diary and probative value of the contents therein, the trial Court ought not to have relied on it. The appellants (co-accused) have every reason to contend that entries therein, if true, are self serving for the respondent. The said diary might have been

written afterthought to make out a defence since the crime in the case came to be registered on 16th July i.e. about 15 days after it did take place.

68. The fact, however, remains that the respondent Vishwas kept P.W.1 Uttamrao in his custody post 8.30 p.m. and confined him at two places until brought him back to the office of Addl.S.P. by 11.30 on the following morning. The respondent was expected to follow only lawful orders of his higher-ups. The fact that P.W.1 Uttamrao was detained during those two days i.e. 30th June and 1st July gets reinforced by documentary evidence in the nature of Call Data Record (CDR) of his cell phone. The trial Court rightly observed that during the period of these two days, the calls to and fro the cell phone of P.W.1 Uttamrao were in multiples than compared to those on other days. Although according to us this falsifies the case of P.W.1 Uttamrao that he was relieved of his cell phone but provided with the same occasionally to make calls for arranging money and cheque book.

69. True, the F.I.R. has been lodged belatedly. An advice of a legal expert had been obtained for lodging of the F.I.R. There is also evidence to indicate that the F.I.R. was

drafted on the basis of a draft prepared by a legal practitioner at Aurangabad and faxed from shop "Mauli Xerox", Aurangabad for being lodged. It needs no mention that, the principle "Falsus in Uno Falsus in Omnibus" is not applicable in India. The averments in the F.I.R. might have been exaggerated so as to make out a serious offence of Section 364-A. It is, however, reiterated that the evidence on record undoubtedly makes out a case of P.W.1 Uttamrao to have been wrongfully confined post 8.30 p.m. on 30th June until 1.30 p.m. of the following day when he was allowed to leave the office of Addl.S.P. on the intervention of P.W.13 Rastogi, Superintendent of Police, Jalgaon. The trial Court ought not to have acquitted the respondent on the same evidence on which the appellants have been convicted for the aggravated form of offence of wrongful confinement. The trial Court referred to certain provisions of Maharashtra Police Act, 1951. It refers to Section 64 of the Police Act, whereunder, the duties of a police officer have been enumerated. Clause (a) of Section 64 speaks about the duty of every police officer promptly to serve every summons and obey and execute every warrant or other order lawfully issued to him by competent authority, and to endeavour by all lawful means to give effect to the lawful commands of his superior. In our view, the trial Court misread Section 64 of the Police Act. It

could never be a duty of the subordinate police officer to assist his higher-ups in doing illegal activities. True, his position vis-a-vis the position of appellant Manoj might have put him under compulsion or he could not have dared to say 'No'. We are conscious of this position. This would be taken as a mitigating factor while imposing sentence, but in no way an excuse or defence for acquittal.

SANCTION FOR PROSECUTION :

70. Section 197 of the Code of Criminal reads as under :

“197. Prosecution of Judges and public servants:

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013.

(a)

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

71. Both, the appellant Manoj and the respondent Vishwas were in the rank of Addl.S.P. and Police Sub-Inspector respectively. Sanction (Exh.460) for their prosecution has been accorded by the State Government. P.W.15 Ruprao was working as a Joint Secretary in the Department of Home, State of Maharashtra. It is in his evidence that, all the papers of investigation were received by his office. An opinion of Joint Secretary, Law & Judiciary Department had also been obtained. All the papers of investigation were then placed before the Additional Secretary, Home. The file again was moved to the Joint Secretary (Law). A draft sanction was prepared. The said sanction was approved by the concerned Minister. A revised sanction was accorded after proposal for according sanction for prosecution for offence punishable under Section 364-A was received. It has also come in the evidence that the original file relating to the sanction has been gutted in Mantralaya fire.

72. Admittedly, P.W.15 has not accorded sanction. He has signed the sanction order (Exh.460) in authentication of the sanction. Perusal of the sanction order indicates the same to have been issued/ granted by the Government of Maharashtra,

the authority competent to remove the appellant and the respondent from duty. There is also evidence of the investigating officer (P.W.16) that all the papers of investigation were forwarded for obtaining sanction. It is also in the evidence that, statements of the very witnesses were re-recorded while Section 364-A was invoked. It needs no mention that sanction can be proved either on examination of the sanctioning authority or perusal of the same would even suggest that the same has been accorded on application of mind. It is reiterated that, the sanction order herein has been accorded by the State Government and not by the Minister concerned. P.W.15 Ruprao has signed the sanction order in authentication thereof as per the rules of business.

73. In case of D. Devaraja Vs. Owais Sabeer Hussain (supra), it has been observed that, the object of sanction for prosecution is to protect the public servant/ police officer discharging official duties and functions from harassment by initiation of frivolous retaliatory criminal proceedings. In paragraph No.32 of the judgment, it has been observed :-

“32. In Amrik Singh v. State of Pepsu [AIR 1955 SC 309 : 1955 CriLJ 865], this Court referred to

the judgments of the Federal Court in Hori Ram Singh v. Crown [AIR 1939 FC 43], H.H.B. Gill v. King Emperor [AIR 1949 FC 9] and the judgment of the Privy Council in Gill v. R. [AIR 1948 PC 128] and held : (Amrik Singh case), AIR p. 312, para 8 :-

“8. The result of the authorities may thus be summed up: It is not every offence committed by a public servant that requires sanction for prosecution under Section 197(1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution.”

74. The facts of the present case indicate that the so called discharge of duty by the appellant and the respondent came to an end post 8.30 p.m. when Patel Brothers left the office of Addl.S.P. with cheque. Further detention of P.W.1 Uttamrao overnight and until he was brought back to the office of appellant Manoj and was allowed to go home only on intervention of Superintendent of Police P.W.13 Rastogi was an

offence of wrongful confinement with a view to meet an unlawful demand of money, in our view, for such act, no sanction for prosecution was required.

75. The judgment of this Court in case of **Atmaram s/o Laxman & ors. Vs. The State of Maharashtra [AIR 1965 Bombay 131]** relied on by learned counsel for appellant is quite distinguishable on facts. Same is the case about other authorities pressed into service by him in connection with grant of sanction under Section 197 of the Code of Criminal Procedure. Needless to mention, each case has to be decided on its peculiar facts and circumstances. The broad proposition of law enunciated by Apex Court and even this Court as well could be considered and in light thereof matter in hand is being decided. It is reiterated that, detention of P.W.1 Uttamrao post 8.30 p.m. on 30th June until his release on the following day by 3.30 p.m. was not in discharge of official duty of appellant and the respondent.

76. **Section 161 of the Maharashtra Police Act :-** The second objection of the learned counsel for the appellants is that, the prosecution has not been instituted within a time frame prescribed by Section 161. It is, therefore, necessary to

first reproduced the said section hereinbelow :-

“161. Suits or prosecutions in respect of acts done under colour of duty as aforesaid not to be entertained, or to be dismissed if not instituted within the prescribed period.

(1) In any case of alleged offence by the Revenue Commissioner, the Commissioner, a Magistrate, Police Officer or other person, or of a wrong alleged to have been done by such Revenue Commissioner, Commissioner, Magistrate, Police Officer or other person, by any act done under colour or in excess of any such, duty or authority as aforesaid, or wherein it shall appear to the Court that the offence or wrong if committed or done was of the character aforesaid, the prosecution or suit shall not be entertained, or shall be dismissed, if instituted, more than six months after the date of the act complained of:

Provided that, any such prosecution against a Police Officer may be entertained by the Court, if instituted with the previous sanction of the State Government within two years from the date of the offence.

77. Learned counsel for the appellant Manoj relied on the judgment of Apex Court in case of **Virupaxappa Veerappa Kadampur Vs. State of Mysore [AIR 1963 SC 849]**. Section 161 of the Bombay (now Maharashtra) Police Act has been interpreted in the said judgment. The observations in paragraph Nos.9 and 10 of the said judgment read thus :

9. The expression "under colour of something" or "under colour of duty", or "under colour of office", is not infrequently used in law as well as in common parlance. Thus in common parlance when a person is entrusted with the duty of collecting funds for, say, some charity and he uses that opportunity to get money for himself, we say of him that he is collecting money for himself under colour of making collections or a charity. Whether or not when the act bears the true colour of the office or duty or right, the act may be said to be done under colour of that right, office or duty, it is clear that when the colour of the office or duty or right, the act may be said to be done under colour of that right, office or duty it is clear that when the colour is assumed as a cover or a cloak for something which cannot properly be done in performance of the duty or in exercise of the right or office, the act is said to be done under colour of the office or duty or right. It is reasonable to think that the legislature used the words "under colour" in S.161(1) to include this sense. It is helpful to remember in this connection that the words "colour of office" has been stated in many law lexicons- to have the meaning just indicated above. Thus in Wharton's Law Lexicon, 14th Edition, we find at p. 214 the following

"Colour of office"

"When an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour." In Stroud's judicial Dictionary, 3rd Edition, we find the following at p. 521 :- Colour : "Colour of office" is always taken in the worst part, and signifies an act evil done by the countenance of an office, and it bears a dissembling face of the right of the office, whereas the office is but a veil to the

falsehood, and the thing is grounded upon Vice, and the Office is as a shadow to it. But 'by reason of the office' and 'by virtue of the office' are taken always in the best part."

10. It appears to us that the words "under colour of duty" have been used in S. 161(1) to include acts done under the cloak of duty, even though not by virtue of the duty. When he (the police-officer) prepares a false Panchnama or a false report he is clearly using the existence of his legal duty as a cloak for his corrupt action or to use the words in Stroud's Dictionary "as a veil to his falsehood." The acts thus done in dereliction of his duty must be held to have been done "under colour of the duty."

78. While in case of *Atmaram & ors.* (supra), it has been observed that, the alleged beating and confinement done by police officer has no connection between such acts and duty imposed on officer. Police officer is not entitled to protection under Section 161(1) of the Act. It has been held in the said judgment that :

“Held that the acts of wrongful detention and assault were committed by the accused persons in the course of their official duty of investigation and, though these impugned acts were not by virtue of their duty and even though they amounted to dereliction of their duty, they were clearly under the cloak of duty within the meaning of S.161.”

79. Again coming back to the facts of the present case, it is reiterated that, keeping P.W.1 Uttamrao in detention/ confinement only with a view to meet an unlawful demand of money would in no way be termed to be an act done under colour or in excess of any duty or authority. In our view, therefore, the appellant and the respondent could not have cover of Section 161 of the Police Act.

80. For all the aforesaid reasons, we are not in agreement with the trial Court's order convicting the appellants for the offence punishable under Section 364-A of the Indian Penal code. To that extent, we are inclined to set aside the impugned order.

81. Since the offence under Section 385 of the Indian Penal Code was not complete as the money did not change hands, it is taken as an offence of attempt to commit extortion, being punishable under Section 385 read with Section 511 of the Indian Penal Code to have been committed by appellant Manoj. The appellant Dhiraj has assisted appellant Manoj for that crime and he being personally present there as an abettor, he is liable to be convicted as if he has committed the said

offence. We, however, do not propose to alter the sentence of imprisonment imposed by the trial Court in that regard. The said sentence of imprisonment and fine be treated as imposed for offence punishable under Section 385 read with Section 511 of the Indian Penal Code.

82. Since the State's Appeal against acquittal is being allowed, we need to hear the respondent on the quantum of sentence. He is not present before the Court. Mr. Ashwini Lomte, learned counsel holding for Mr. S.J. Salunke, learned counsel for the respondent would submit that, the respondent be viewed leniently. He has retired from service and is not keeping good health.

Learned A.P.P. would submit to impose sentence proportionate to the offences proved.

83. In view of the above, the appeals are disposed of in terms of the following order :

ORDER

(i) Criminal Appeal No.104/2019 and Criminal Appeal

No.212/2019 are partly allowed.

(ii) The order of conviction and consequential sentences imposed against both the appellants Manoj Prabhakar Lohar and Dhiraj s/o Yashwant Yeole for offence punishable under Section 364-A of the Indian Penal Code is hereby set aside. The the appellants Manoj Prabhakar Lohar and Dhiraj s/o Yashwant Yeole are acquitted of Section 364-A of the Indian Penal Code. Amount of fine, if any, paid by the appellants in connection with this crime, be paid back to them immediately.

(iii) Rest of the terms of the impugned order and consequential sentences imposed against the appellants to stand unaltered.

(iv) The appellants shall surrender to serve out remainder of the sentence, if any.

(v) Criminal Appeal No.468/2022 is partly allowed. The respondent Vishwas Raosaheb Nimbalkar is hereby convicted for the offences punishable under Sections 342, 346, 348 and Section 385 read with Section 511 of the Indian Penal Code and, therefore, sentenced to suffer a consolidated sentence of

rigorous imprisonment for one month and to pay fine of Rs.1000/-, in default to suffer simple imprisonment for one month. The respondent Vishwas Raosaheb Nimbalkar shall surrender to serve out the sentence.

(vi) Pending Criminal Application No.3043/2022 is disposed of.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

After pronouncement of the judgment, Ms. Ashwini Lomte, learned counsel holding for Mr. S.J. Salunke, learned counsel for the respondent in Criminal Appeal No.468/2022 sought time for surrender of the respondent. According to her, the respondent has undergone a by-pass surgery and has been advised rest. Some papers in that regard were offered in that regard. In view of the same, the respondent is granted six weeks time to surrender.

(R.M. JOSHI, J.)

(R.G. AVACHAT, J.)

fmp/-