

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

CRIMINAL APPLICATION NO. 4324 OF 2022

**DEVYANI D/O SURESH CHAVAN AND ORS.
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. V. B. Garud, Advocate for the applicants
Mrs. G. L. Deshpande, APP for the respondent/State

CORAM : R. M. JOSHI, J.
RESERVED ON : 22/06/2023
PRONOUNCED ON : 30/06/2023

ORDER :-

1. This application is filed under Section 482 of the Code of Criminal Procedure seeking quashment of proceeding bearing R.C.C. No. 105/2021 (Old Cri. M.A. No. 120/2020) pending before JMFC, Parola, Dist. Jalgaon.

2. The applicants are accused in the aforesaid proceeding for the offences punishable under Sections 384, 385, 504, 506 r/w 34 of IPC. The applicant No.1 is legally wedded wife of respondent No.2 and applicant No.2 and 3 are father and brother of the applicant No.1. The marriage of between applicant No.1 and respondent No.2 was performed on 24/05/2010 and out of the said wedlock a son is born. It is contention of the applicant No.1 she was subjected with the cruelty at the hand of the respondent No.2 husband. and that there was dowry

demand from the husband and in-laws. Applicant No.1 and her son Rudra filed proceedings u/s 12,17,18,19,20,22 and 23 of Prevention of Women from Domestic Violence Act, 2005 (for short 'DV Act') against respondent No.2 and his relatives in the Court at JMFC, Chalisgaon wherein respondent No.2 was directed to pay maintenance of Rs.3,000/- per month. Another proceeding being Special Civil Suit No. 01/2020 was filed u/s 18 and 19(1) of Hindu Adoption Maintenance Act seeking maintenance and cost of litigation from respondent No.2. It is stated that divorce proceeding being Marriage Petition No. 11/2022 is filed against respondent No.2 which is one amongst other proceedings initiated by her. It is alleged that by way of counter blast to the said proceedings respondent No.2 lodged false criminal proceeding being Cr.M.A. No. 120/2020 before JMFC, Parola seeking action under Section 156(3) of Cr.P.C. The learned JMFC issued direction to seek report of the concerned police station and rejected the prayer of investigation under Section 156(3) of Cr.P.C.. After considering the report of the police u/s 202 of Cr.P.C. and order came to be passed on 02/08/2021 of issuance of process against applicant under Section 384, 385, 504, 506 read with Section 34 of IPC.

3. It is contended on behalf of applicants that the offence punishable under Section 384 and 385 of IPC do not get attracted for fulfillment of essential ingredients in order to constitute the said offence.

He also argued that by way of counter blast present complaint has been filed against the applicants. It is also stated that there are no specific allegations against present applicants to even attract provisions of Sections 504 and 506 of IPC as there are no statements as to the exact abuses and threats given by the applicants. None appeared for respondent No.2 in spite of giving an opportunity of hearing.

4. The scope and powers of High Court to quash criminal proceedings under Section 482 of Criminal Procedure Code is well settled. In case of ***State of Haryana and others Vs. Ch. Bhajan Lal and others, MANU/SC/0115/1992*** guidelines are laid down that must be adhered to while exercising inherent powers under Section 482 Cr.P.C to quash first information report or criminal proceeding. The relevant paragraph reads thus:

"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information

report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

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

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

5. Keeping in mind above proposition of law question before

this Court is whether accusations levelled against applicants fall under any of categories mentioned above and that whether *prima facie* any offence is made out in the complaint against them.

6. Perusal of the complaint made before the learned Magistrate shows that the allegations made in respect of the alleged incident occurred on 25/10/2019 and 08/07/2020. It is alleged that applicant came to the house of respondent No.2 and applicants rake up quarrel with him. It is further stated that they threatened him to pay Rs. 3 lakhs if wanted to meet minor son. It is alleged that this amounts to extortion. In order to constitute an offence punishable under Section 384 and 385 of IPC act must amounts to extortion within a meaning of Section 383 of IPC. Section 383 reads 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".

7. According to above provision, when any one puts in fear of injury to that person or any other person to deliver property or valuable security, can be said to have committed extortion. As there could be arguments as to whether the statute intends actual delivery of such property for completion of offence, this provision needs interpretation.

The illustrations appended to section comes in aid for interpretation of any provision/section of statute. To hold as to whether actual delivery of the property is pre-condition for completion of offence, it would be relevant to consider illustrations appended to Section 383 of IPC which reads thus:

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion."

8. Perusal of above illustrations clearly demonstrate that in case of threats of defamation, wrongful confinement, hurt etc, extortion is said to be committed on such person successful in receiving property or valuable security. Thus, there cannot be any doubt that for completion of extortion delivery of the same is a condition precedent.

9. Herein this case, the allegation is made against applicants that they demanded Rs. 3 lacs for meeting his son. Apart from the fact that there is no actual handing over of the amount to the applicants, there is also no allegation that he was put in fear of any injury to him or to any other. As per the complainant himself there is no handing over of the amount to applicant and for want of he being put in fear of any injury essential ingredients of extortion as contemplated under Section 383 of IPC are not satisfied. Resultantly no offence could be said to have been made out against applicants punishable under Section 384, 385 of IPC.

10. As regards offence punishable under Section 504 and 506 of IPC is concerned, though there is vague statement in the complaint with regard to the abuses hurled at respondent No.2 on 25/10/2019, but said statement is omnibus and without attributing specifically against particular applicant. In respect of the allegations on 08/07/2020 no specific statement is made as to any threat or abuses given by applicants against respondent No.2. Thus, the offences punishable under Section 504 and 506 of IPC are also not made out.

11. In the background of filing of number of proceedings by applicant No.1 against respondent No.2 and existence of long standing dispute between them, this Court finds substance in the contention of

counsel for the applicants that this could be a case of false implication. Present case, therefore, squarely falls in guidelines (1), (3) and (7) in case of ***Bhajan Lal*** (supra). Hence application stands allowed. R.C.C. No. 105/2021 stands quashed.

(R. M. JOSHI, J.)

ssp