



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.210 OF 2025

Mohammed Halim Mohammed Hanif Khan ...Petitioner
Vs
State Of Maharashtra And Anr ...Respondents

Adv. Sana Raees Khan a/w. Adv. Neha Balani, Advocate for the
Petitioner.

Mr. S. V. Gavand, Addl. P.P. for the State.

CORAM : RAVINDRA V. GHUGE &
RAJESH S. PATIL, JJ.

DATE : 17th JANUARY, 2025

ORDER (Per Rajesh S Patil, J)

1. This Writ Petition is filed under Article 226 of the Constitution of India and under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, by the Petitioner (original accused) seeking quashing of First Information Report (FIR) No. 522 of 2024 dated 4th December, 2024 registered at Chunabhatti Police Station, Brihanmumbai Shahr, at the behest of Respondent No.2, for the offence punishable under Sections 308(4), 351 (2), 352 of the Bharatiya Nyay Sanhita, 2023.

2. The prosecution's case in the FIR is that the Complainant was granted repair work of Quisar Building at Kurla as

the Municipal Corporation had declared the building requires immediate repairs. The accused person was residing on the first floor in the said building. The accused used to threaten the Complainant on the grounds that he is a journalist by profession, and the Complainant should not forget this fact and should pay a sum of Rs.10,00,000/- and also carry out the repairs to the accused's room free of cost, otherwise he will kill the Complainant. It was also further stated that periodically the Complainant had paid a sum of Rs.3,00,000/- up till now to the accused. However, the accused continued the harassment to the Complainant and on 30th November, 2024, at around 8.00 p.m., again threatened the Complainant with dire consequences if the sum of Rs.10,00,000/- is not paid to him. It is also further stated in the complaint that in the month of August, 2023, the accused was arrested in a murder case. Hence, on the basis of such complaint, the FIR was lodged against the accused for the offence punishable under Sections 308(4), 351(2), 352 of the Bharatiya Nyay Sanhita by the Chunabhatti Police Station.

3. It has been vehemently submitted on behalf of the Petitioner that there is an unexplained and inordinate delay of more than four days in the registering the FIR, which *prima facie* casts a

grave doubt on the veracity of the present proceedings. Further, there is no proof that the Complainant paid any monies to the Petitioner. It is also pertinent to note that the said Quisar Building is illegal and construction of its third and fourth floor is unlawful and illegal as the same was not permitted by the MCGM. The Petitioner has approached the Municipal Corporation and the Senior Inspector of Chunabhatti Police Station thereby sending them letters regarding illegal and unauthorized construction of Quisar Building. Further, without going into the merits of the matter, a careful perusal of the FIR indicates that no evidence can be generated in respect of the genuineness of the said FIR.

4. Ms. Sana Khan, the learned Advocate for the Petitioner has relied upon the following judgments to buttress her submissions:-

(i) *Ramesh Chandra Gupta V/s. State of Uttar Pradesh, (2022) 18 SCC 706;*

(ii) *Mohammad Wajid & Anr V/s. State of U. P., 2023 SCC OnLine SC 959;*

(iii) *Malemia Imiong v. Tridip Borkataki, 2017 SCC OnLine Gauhati 1379;*

(iv) State of Harayana Vs. Bhajan Lal & Others, 1992 Supp (1) SCC 335.

5. Hence, it is submitted on behalf of the Petitioner that the FIR should be quashed and the present Writ Petition should be allowed.

6. *Per contra*, the learned Additional Public Prosecutor strongly opposed the Writ Petition and submitted that the perusal of the entire FIR would show that there is ample evidence against the Petitioner to convict him under the offence under Sections 308(4), 351(2), 352 of the Bharatiya Nyay Sanhita. The complaint recorded clears shows that the offence is made out against the Petitioner. The Petitioner/Accused needs to face trial and the FIR cannot be quashed, at this stage. The learned Additional Public Prosecutor tendered a copy of the order dated 13th December, 2024, passed in the Anticipatory Bail Application of the Petitioner. In the said order, it has been mentioned that three crimes have been registered against the present Petitioner.

7. The Petitioner's Advocate has not denied about the registration of three crimes against the Petitioner. She has clarified

that out of the three crimes, one crime was non-cognizable, and the other two crimes were cognizable, for which bail had already been granted.

8. We have heard counsel for the both the sides and with their assistance, we have gone through the documents on record.

9. For quashing criminal proceedings under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and under Article 226 of the Constitution, we have to see whether the allegations in the complaint and FIR *prima facie* indicate that there are serious allegations against the accused of having committed an offence.

10. The complaint is filed by a person who was given a contract to carry out repairs of Quisar Building, wherein the Petitioner resides on the first floor. In the FIR, it has been stated that the Petitioner, being a journalist, used to threaten the Complainant and demand monies from the Complainant. The Complainant's case in the complaint before the police is that, in fact, he paid a sum of Rs.3,00,000/- to the Petitioner. However, inspite of that the Petitioner again started harassing the Complainant and told him that

a sum of Rs.10,00,000/- should be paid to him, and his room should also be repaired by the Complainant free of cost. It is also further stated in the complaint that the Petitioner used abusive language and threatened that the Complainant should not forget that the Petitioner is a journalist. It is also further stated in the FIR that the Petitioner threatened the Complainant that he will be killed if the demand of ransom amount of Rs.10,00,000/- is not paid.

11. Hence, on the face of it, the FIR has been filed wherein clear statements have been recorded against the accused which ultimately would attract the provisions of Sections 308(4), 351(2) 352 of the Bharatiya Nyay Sanhita, 2023.

12. On behalf of the Petitioner, four judgments were referred. In *Ramesh Chandra Gupta* (supra), the Hon'ble Supreme Court was dealing with the proceedings, in which the High Court had refused to entertain the Criminal Application on the basis of scope of interference under Section 482 of the Cr.P.C. The Hon'ble Supreme Court held that the bare perusal of the complaint on which basis the FIR had been lodged at the instance of *de-facto* Complainant did not disclose any act of the Appellant or their

participation in the commission of crime. They were neither concerned with the registered sale deed executed in favour of the *de-facto* Complainant, nor in possession of the subject property, nor were parties to the civil proceedings. It was not the case of the Complainant that either the Appellants have played any active/passive role either inscribing the documents or are the facilitators or witness to the document in reference to which the Complaint had been made for cheating and forgery or have played any role in delivery of possession of subject property in question. Hence, the judgment of the High Court was set aside and the F.I.R. was quashed.

13. In **Mohammad Wajid** (supra), the Hon'ble Supreme Court was dealing with the proceeding where the FIR was lodged for the offences punishable under section 395, 504, 506 and 323 of the Indian Penal Code, 1860. The incident alleged to have occurred in the year 2021 and the FIR was lodged in the year 2022. In the said FIR, no date and time of the alleged incident were stated. No plausible explanation was offered by the first informant as to why there was inordinate delay in lodging the FIR. In such circumstances the Supreme Court while quashing the FIR held that the FIR in a

Criminal Case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The recovery of few incriminating articles may also at times lend credence to the allegations leveled in the FIR. However, in the absence of all such materials merely on the basis of vague and general allegations levelled in the FIR, the accused cannot be put to trial.

14. In the judgment of *Malemia Imiong* (supra), the petitioners had lodged an FIR against the respondent for cheating in Dimapur. The respondent was arrested and an agreement for repayment was executed and additionally, the respondent's vehicle was kept as a security. After the execution of the agreement, the respondent left Dimapur without repaying the amount. Further, the respondent filed a complaint in Guwahati alleging that he was subject to forceful arrest, torture and coercion in order to sign the agreement. The complaint was registered as a CR Case. The Dimapur police officials submitted a report confirming that the agreement was signed voluntarily, and that the complaint of the respondent was false and frivolous. The High Court's reasoning behind the decision to quash the criminal proceedings was that the

respondent suppressed various facts regarding the pending case in Dimapur and fabricated a story to shield himself from those proceedings. The agreement, which he claimed was signed under duress, was found to be voluntary, as confirmed by the Investigating Officer's report. The court concluded that there was no cause of action in Guwahati since the incident occurred in Dimapur, and the complaint appeared to be a counter-blast to resist the Dimapur case. Moreover, the court held that such proceedings, filed with malafide intent and ulterior motives, fall within the purview of being quashed as per established legal principles by the Hon'ble Supreme Court in the case of *Bhajan Lal*.

15. In the judgment of *Shatrughan Singh Sahu* (supra), the petitioner is an advocate, who filed a writ petition challenging FIR filed against him registered for offences punishable under Sections 384 and 388 of IPC. None of the witness statements collected by the investigating agency mentioned that the complainant had given Rs.25,00,000/- to the petitioner. The Court concluded that since the basic ingredients of extortion under Section 383 of IPC were not established, the charges under Sections 384 and 388 could not be sustained. The court viewed the initiation of criminal proceedings

against the petitioner as an abuse of the legal process.

16. In the present proceedings, the FIR has been lodged on 4th December, 2024, on the basis of the commission of the offence on Saturday, 30th November, 2024. Hence, the FIR was filed within four days of alleged offence being committed. The Complainant specifically mentions about demand of a sum of Rs.10,00,000/- and also that the Complainant should carry out the repairs of the Petitioner's room, free of cost. Therefore, the facts in present proceedings are quite different than the judgments relied upon by the Petitioner. Hence, the ratio laid down by the Hon'ble Supreme Court in various abovementioned judgments are not applicable to the present proceedings.

17. In the judgment of *Bhajan Lal* (supra), the Hon'ble Supreme Court, in paragraph No. 102 laid down the list of grounds or circumstances where the High Court should exercise powers under Article 226 of the Constitution of India or the inherent powers of Section 482 of the Code of Criminal Procedure. In our view, taking into consideration the facts of the proceedings, we find that the case does not fall within the seven guidelines given by the

Supreme Court in *Bhajan Lal* (supra).

18. In the recently reported judgment of *CBI vs. Aryan Singh, AIR 2023 SC 1987* and in the judgment of *State of Odisha vs. Pratima Mohanty and others, (2022) 16 SCC 703*, the Supreme Court has held that while examining the power under Section 482, the High Court should not conduct a mini trial. Paragraph no.8.2 of the judgment in *Pratima Mohanty* (supra) reads as under :

8.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per the settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under section 482 CrPC when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under section 482 CrPC the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this court the powers under section 482 CrPC are very wide, but conferment of wide power requires the court to be more cautious. It casts all onerous and more diligent duty on the Court.

[Emphasis supplied]

19. After considering the contents of FIR and the various documents on record attached to the FIR, and the Charge-sheet, we

are satisfied that it constitutes the ingredients of the offences alleged. It is also pertinent to note that the Complainant has mentioned in the complaint that the Petitioner/Accused, in the month of August, 2023, was arrested in a murder case. While the learned Additional Public Prosecutor referred to the Anticipatory Bail order dated 13th December, 2024, passed by the Sessions Court at Mumbai, in which there is a reference of three crimes being registered against the Petitioner/Accused. On behalf of the Petitioner/Accused, there is no denial of the fact that three other crimes were earlier registered against him. However, it was submitted on behalf of the Petitioner/Accused that only one crime was non-cognizable while the other two were cognizable offences for which bail had already been granted to the Petitioner/Accused.

20. Taking into account the law as laid down by the Supreme Court in the judgments referred above, we find that there is no merit in the present Writ Petition and the same deserves to be dismissed. Hence, the following order :-

ORDER

- (i) The Writ Petition stands dismissed.**

(ii) Needless to state, any observations made herein are only for the purposes of deciding the Writ Petition only and would have no bearing on the final adjudication of the proceedings.

(RAJESH S. PATIL, J.)

(RAVINDRA V. GHUGE, J.)