

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 7935 of 2016****With****R/CRIMINAL MISC.APPLICATION NO. 7938 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE P. M. RAVAL****Sd/-**

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Approved for Reporting	Yes	No
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HARSHADBHAI PRABHUDAS SHETH & ANR.**Versus****STATE OF GUJARAT & ANR.****Appearance:****MR MAHESH POOJARA FOR MR ASHISH M DAGLI(2203) for the
Applicant(s) No. 1,2****MS BHAVIKA H KOTTECHA(2942) for the Respondent(s) No. 2****MR ROHAN SHAH, APP for the Respondent(s) No. 1****CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL****Date : 19/08/2026****ORAL JUDGMENT**

1. Today, learned advocate Mr. Mahesh Poojara for Mr. Ashish M. Dagli, learned advocate appearing for the applicants places on record the death certificate of original accused no.4 Jagdish Lalji Solanki, who is petitioner no.2 in Criminal Misc. Application No. 7938 of 2016, which is taken on record. Considering the death certificate mentioned above, the proceedings of Criminal Misc. Application No. 7938 of 2016 stands abated qua the original accused no.4-the petitioner

No.2 in Criminal Misc. Application No. 7938 of 2016.

2. By this application under Section 482 of the Code of Criminal Procedure, 1973, the petitioners seek to invoke the inherent powers of this court praying to quash and set aside the FIR being CR No. I-75/2016 registered before A Division Police Station, Rajkot for the offence punishable under Sections 409, 504, 506(2) read with Section 114 of the Indian Penal Code.

3. The short facts as narrated in the FIR are to the effect that the complainant resides with his family at Khothariya naka chawk and is owning one shop which is rented on 31.01.1985 in favour of Harshadkumar Prabhudas for the purpose of carrying on Optical business and rent note thereof was also executed and the business in the name of Diamond Optical shop was operated by Harshadkumar. It is further the case of the informant that since few months, Harshadbhai was not found and the complainant as and when he went to inquire, since there were arrears of rent and at that time, he found one person namely Jagdish seating in the shop and on asking him with regards to Harshadkumar stated that his brother in law Arvind has taken possession of the shop and started using abusive words. Subsequently, when complainant went home, Hussainbhai informed that the said shop was given to him by

Jagdish. It is also stated in the FIR that Jagdish had informed that the shop was taken over by Arvind, Bharat Pala and Afzal. It is further stated in the FIR that on 10.03.2016, Bharat Pala came to the office of the complainant and informed that the shop in the name of Diamond Optical was taken over from Harshadbhai by Bharatbhai and Arvindbhai and requested to transfer the rent note in their favour, failing which, a threat was administered to face serious consequences. It is also narrated in the FIR that conversation recorded in the mobile is also with him. Thereafter, the complainant was invited to the office of Bharatbhai. The case of the informant that after a day or two, Afzalbhai informed the complainant that the key of the shop and the possession is with him, and was threatened not to make any inquiry about the shop and accordingly, the complaint came to be filed alleging the offence punishable under Sections 409, 504, 506(2) and 114 of the Indian Penal Code.

4. Learned advocate Mr Mahesh Poojara for Mr. Ashish Dagli, learned advocate appearing for the applicants submits that no case is made out from the reading of the entire FIR except for bare statements of the threatening the complainant and there is no averments as to how the present petitioners intended to cause the alarm to the complainant and under

circumstances has argued to quash the present complaint.

5. Learned advocate for the applicants further draws attention of this court towards Civil Misc. Appeal No. 104 of 2016 whereby, the Ex. 5 which was initially rejected by the trial court came to be allowed by the 10th Additional District Judge, Rajkot vide judgment and order dated 03.07.2019 and thus, argued that the complainant is trying to give criminal colour to civil case more particular dispute of rent between the tenant namely petitioner no.1 in Criminal Misc. Application No. 7935 of 2016 and the original complainant.

6. Learned advocate for the applicants would further submits that petitioner no.2 in Criminal Misc. Application No. 7935/2016 is an advocate whereas the petitioner no.1 in Criminal Misc. Application No. 7938/2016 namely Arvind is an employee of petitioner no.1 in Criminal Misc. Application No. 7935/2016. Thus, it is argued even if the FIR is read as it, no case of 504 or 506(2) of IPC has made out.

7. Per contra, learned advocate Ms Bhavika Kotecha for the complainant would submit that complainant is a senior citizen and that the dispute is not at all civil in nature but the petitioners herein have conspired against the complainant, and therefore, lodged the present FIR, more particularly, original accused no.2 Bharat Pala has already accepted before the

complainant the mistake committed by him and has also felt sorry for that and for that purpose, has also placed on record the transcript of phone conversation between advocate Bharat Pala and complainant, whereby he has sought apology from the complainant.

8. Learned advocate for the complainant would further submit that the complainant had given an application for police protection on 16.03.2016, and thereafter, on 23.03.2016, the present FIR is lodged before the concerned police station, however, due to interim relief operating in favour of the petitioners, no further investigation is carried out and when prima facie case is made out, the court should not entertain the present petition and thus, argued to reject present petition.

9. Learned advocate for the complainant further submits present accused have also illegally got the assessment of tax of the said property in the name of the complainant's father from the Rajkot Municipal Corporation and has also signed on behalf of his father and the said fact has come to the knowledge of the complainant after having preferred an application under RTI Act. Thus, it is argued that the applicants in connivance to each have tried to usurp the property of the present complainant and thus, argued to reject present

petition.

10. Learned APP Mr. Rohan Shah appearing for the respondent no.1-State would submit that as the stay is granted, no further investigation could be carried out. However, as pointed out to the photographs which would reflect the names of three persons on the closed shutter of the shop bearing name of Arvind Raninga, Jitendra Pala, Ashok Pala and Bharat Pala, and thereby, the FIR lodged by the present informant is required to be thoroughly investigated and thus, argued to reject present petition.

11. Heard learned advocates for the respective parties.

12. At the outset, the essential ingredients of punishable under Section 503 of the Indian Penal Code are required to be considered, which are as follows;

1. Threatening a person with any injury;
 - (i) to the person, reputation or property, or
 - (ii) to the person, or reputation of any one in whom that person is interested.
2. The threat must be with intent;
 - (i) to cause alarm to that person; or
 - (ii) to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat; or

- (iii) to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

13. Thus, on bare perusal of section 506 of IPC, it is clear that a part of it relates to criminal intimidation. However, before an offence of criminal intimidation is made out, the complainant must establish that the accused had an intention to cause alarm to the complainant and mere threats given by the accused not with an intention to cause alarm to the complainant but with a view to see that he does not come to his office or place for inquiring would not amount to constitute an offence of criminal intimidation. In the entire FIR, there is no whisper of any allegation by the complainant that the threats which were administered actually caused any alarm to the first informant and that he felt actually threatened.

14. It is also required to be noted that on 05.04.2016, after lodging of the FIR also, petitioner no.1 Harshadbhai -original tenant had also preferred an application with the Police Commissioner inter-alia contending that there are various applications preferred by both the sides to the police and had also contended that possession is exclusively with him. Be that as it may, the fact remains that the entire FIR is silent with

regards to the allegations of threats which were administered and actually causing any alarm to the first informant and that he actually well threatened is conspicuously missing, under the circumstances, no case is made out. As far as Section 409 of IPC is concerned since the petitioner no.1 of Criminal Misc. Application No. No. 7938 of 2016 is the employee of Harshabhai and when the main allegations of Section 506(2) are not proved, no useful purpose would serve to deal with 409 and 114 of IPC, under the circumstances, to secure the ends of justice, it would be appropriate to quash and set aside the impugned FIR and all consequential proceedings initiated in pursuance thereof.

15. Thus, present applications are allowed. The impugned FIR as referred to herein above, as well as all consequential proceedings initiated in pursuance thereof, are hereby quashed and set aside *qua* the applicants herein.

15.1 Rule is made absolute to the aforesaid extent.

K. S. DARJI

Sd/-
(P. M. RAVAL, J)