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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 722 OF 2017

1. Pawan Subhash Sarkale
Age:- 38 years, Occ.: Legal Advisor
Residing at, Flat No. B/003.
2. Deven Vishnu Kocharekar,
Age :- 46 Years, Occ. Service,
Residing at, Flat No. B/202.
3. Rajan Shantaram Vaze
Age :- 51 Years, Occ. Service,
Residing at, Flat No. B/303.
4. Rajdeep Jagannath Dalvi,
Age :- 46 Years, Occ. Service,
Residing at, Flat No. B/402.
5. Anish Dinesh Save,
Age :- 29 Years, Occ. Service,
Residing at, Flat No. B/103.
6. Jayesh Amarchand Shah,
Age :- 51 Years, Occ. Business,
Residing at, Flat No. B/104.
7. Devenda Pralhad Gondole,
Age :- 47 Years, Occ. Service,
Residing at, Flat No. B/102,
(All residents of "B" Wing of
Mohak House No. 3, Survey
No. 245, Manvel Pada Road,
Virar (E), District Palghar.)

... Applicants

V/s.

1. State of Maharashtra.
(At the instance of Vasai Police Station)
2. Ashutosh Madhukar Joshi,
Residing at Kingston Tower,

Room No. 201-204,
Opp. Old Viva, College,
Virar (E), Tal. Vasai.

... Respondents

Mr. Amit Ghag for the Applicant.
Mr. Tanveer Khan, APP for the Respondent-State.
Mr. A. R. Gole for the Respondent No. 2.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 10th JULY 2026

PRONOUNCED ON : 29th SEPTEMBER 2026

JUDGMENT :-

1) The present Application filed under Section 482 of the Code of Criminal Procedure (for short CrPC)/now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeks to quash and set aside the FIR bearing C.R. No. 79 of 2017 registered with Vasai Police Station (Vasai West) and S.C.C. No. 57 of 2021 pending before the learned JMFC, Vasai, for the offences punishable under Sections 385 and 34 of the Indian Penal Code, 1860 (for short IPC).

2) Heard Mr. Amit Ghag, learned Advocate for the Applicants, Mr. Tanveer Khan, learned APP for the Respondent-State and Mr. A. R. Gole for the Respondent No. 2.

3) The allegations in the complaint are as follows :-

3.1) The FIR has been filed by Respondent No. 2, Mr. Aashutosh Madhukar Joshi. It is the case of Respondent No. 2 that, he is a Real Estate

developer by profession and his construction site at the relevant time was at Survey No. 245, Hissa No. 3/1, Virar. Construction was in respect of a building by the name of Mohak House No. 3. The said building has 5 wings, out of which 4 wings are ready whereas work in respect of 'A' Wing was in progress. That, some of the occupants of 'B' Wing i.e. the Applicants herein and Shraddha Kocharekar, Monika Save, Karuna Gondale, Ivaa S., Ranjana Waze, and Archana Sarkale had complained against Respondent No. 2 to the Vasai - Virar Municipal Corporation and other Authorities in respect of the work of 'A' Wing of the said building. The said complaints were untenable and false. Respondent No. 2 made efforts to sort out the issues in respect of the occupants of 'B' Wing. The said occupants of 'B' Wing filed a complaint or against Respondent No. 2, including a complaint in Consumer Dispute Redressal Commission.

3.2) On 9th May 2017, Applicant No. 1 called Respondent No. 2 and informed him that he, along with some other occupants of 'B' Wing, wanted to meet Respondent No. 2 to discuss a settlement. That, when Respondent No. 2 invited them to his office, they insisted on meeting at some other place. The parties decided to meet at a neutral venue. Applicant No. 1 sent the address via SMS. Respondent No. 2, along with his C.A. Ashutosh Vidhwans, met Applicant No. 1 and others at a hotel known as 'Farm House'.

3.3) Applicant No. 1 gave a proposal to Respondent No. 2 that he should give each of the flat owners Rs. 25 lakhs so as to ensure that there is

no trouble from the said flat owners and the construction of 'A' Wing would not be objected to nor would any obstruction be created in respect of the said construction. Respondent No. 2 was allegedly threatened that, if the said demands were not met with, Respondent No. 2 would face more trouble. That, his life would be made difficult.

3.4) The Applicant No. 2 allegedly informed Respondent No. 2 that, they had discussed the said issues with their wives. If the said amount of Rs.25 lacs was given they would sell their flats in 'B' Wing and would leave the said premises. That, they would not trouble Respondent No.2 thereafter. The other occupants of 'B' Wing also had a similar kind of conversation with Respondent No. 2.

3.5) Respondent No. 2 informed the Applicant that, he does not have the monies and therefore would not be able to pay the same. After informing them of the decision, Respondent No. 2 along with his C.A., left the said place. It is the contention of Respondent No. 2 that, he had video recorded the whole conversation. It is on these allegation that, the said complaint has been filed. Respondent No. 2 has also filed on record the transcripts of the conversations.

4) Mr. Amit Ghag, learned Advocate appearing for the Applicants submitted that :-

4.1) The Applicants and their wives are flat purchasers in a building known as Mohak House No. 3, B Wing, situated at Virar, Palghar. That, after taking possession, there were various issues i.e. as non-registration of co-

operative society, not executing of conveyance deed in favour of the society, not providing the garden as agreed, and not taking care of the maintenance of the building which were faced by the flat purchasers. Due to the said issues, differences and irregularities committed by Respondent No.2, correspondence was exchanged between the parties which ultimately resulted in filing of consumer complaint among others against Respondent No. 2. By Order dated 10th January 2017, the consumer complaints were admitted by the State Consumer Disputes Redressal Commission, Mumbai.

4.2) As a counterblast to the said consumer complaints, the present FIR was filed in June 2017. The conversation with Respondent No. 2 which is relied upon is nothing but settlement talks which were held between the Applicants and Respondent No. 2. The meeting on 9th May 2017 at Hotel Farm House, Vasai, was held only to resolve all the disputes and differences amicably.

4.3) Respondent No. 2 had also filed Civil Suit bearing No. 91 of 2016 before the learned Civil Judge (Senior Division) at Vasai against the Applicants, seeking damages.

4.4) The present case is nothing but an arm-twisting tactic to settle disputes before the consumer forum. The FIR is lodged with a mala fide intention. There is an unexplained delay of over one month in lodging the FIR. The alleged incident had occurred on 9th May 2017, while the FIR was lodged on 14th June 2017. There is no reference to the alleged meeting of 12th

June 2017 in the the FIR. The mala fide intention is clear from the fact that the Respondent No. 2, in his complaint dated 14th July 2016 has not referred to the meeting of 12th June 2017. The said meeting is only referred in the supplementary statement.

4.5) The meetings were held in furtherance of a settlement proposal. That, the Applicants never compelled, coerced or threatened Respondent No. 2 to accept the proposal. That, the allegations made in the FIR cannot attract the provisions of Sections 385 and 34 of the IPC. The Criminal Courts have been misused with mala fide intention only to harass the Applicants. No offence under Section 385 of the IPC can be made out. The dispute, at the most, is a civil dispute. The criminal complaint has been lodged only to pressurize the Applicants into withdrawing the consumer complaints.

4.6) The statement of Ashutosh Vidhwans (CA), the witness allegedly present at the meeting on 9th May 2017, was purportedly recorded only on 3rd July 2017. Perusal of the statement would clearly show that, the verbatim words as allegedly spoken during the meeting held on 9th May 2017 are in contrast with the alleged narrative of the words spoken/mentioned by Respondent No. 2 in the FIR. The transcripts do not support the alleged version of the witness.

4.7) The statement of Altaf Motani which is in respect of the meeting held on 12th June 2017 is recorded on 15th June 2017. The transcripts filed on record do not support the version of the witness. Perusal of the transcripts,

filed in respect of both the meetings, clearly show that it was a purely healthy discussion undertaken in an attempt to explore the possibility for an amicable settlement. The Applicants had not given any threat of causing any injury to Respondent No. 2.

5) Mr. A. R. Gole, learned Advocate appearing for the Respondent No. 2 submitted that :-

5.1) Prima facie a case under Section 385 read with Section 34 of the IPC is clearly made out. Perusal of the FIR and the transcripts would indicate that, the demand of extortion at the behest of the Applicants has been clearly made out.

5.2) The said demands amount to extortion, as the amount demanded is extremely high. The flats were purchased for an amount of Rs. 25 lakhs. Under the garb of settlement, the Applicants demanded an amount of Rs. 25 lakhs each. The same would clearly amount to extortion. The Applicants had threatened Respondent No. 2 and told him that they would put obstacles in the construction work of Respondent No. 2 and ensure that Respondent No. 2 is harassed.

5.3) The Statements of witnesses i.e. C.A. of Respondent No. 2, the waiter and manager of the hotel are recorded by the Investigating Officer which clearly make out the case against the Applicants.

5.4) The threat of injury can be bodily injury or injury to property or to reputation. In the present case, there is an injury to reputation. Even the

threat of filing a complaint before the Authority and continuing with such complaints to ensure that injury to the property, body or reputation of a person is caused is also a form of injury.

5.5) In the present case, the demand is of Rs. 25 lakhs per person. The demand is made by 7 persons, so the total amount is an astronomical and illogical amount of Rs. 1 crore 75 lakhs. Admittedly, the Applicants had purchased the flat for the same amount. Such a huge amount negates the argument that the meeting was for a genuine proposal for settlement. The quantum of demand makes out a case of extortion.

5.6) The supplementary statement of Respondent No. 2 has been recorded on 14th June 2017. The mobile of Respondent No. 2 has been surrendered under the Panchanama. Video and audio recordings and messages from the accused persons were seen and recorded in the Panchanama. There are statements of Ramiz Mulla, waiter of the hotel, Altaf Motani, who was present at the meeting on 12th June 2017, and Ashutosh Vidhwans, who was present at the meeting on 9th May 2017. All these witnesses have clearly stated about the demand and threats given by the Applicants.

5.7) Learned Advocate for Respondent No. 2 relied upon the judgment of the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal*, reported in *1992 Supp (1) SCC 335*, to submit that the present case does not fall in any of the 7 instances/categories in para 102 thereof.

5.8) Reliance was placed on the judgment of the Division Bench of this Court in the case of *Rajesh @ Dharmesh Vs. State of Maharashtra*, reported in *2017 SCC Online Bom 8411*, to submit that this Court has refused to quash an FIR under Section 385 of the IPC where the threat was given, that if the demand for money was not met, the lease of the Complainant would be cancelled through the collector. This Court held that, an offence under Section 385 was made out when the demand was made with the threat of injury and that the actual payment was not necessary.

5.9) Reliance was placed on the judgment in the case of *State of Odisha Vs. Pratima Mohanty*, reported in *(2022) 16 SCC 703*, to submit that after filing of the chargesheet after due investigation the same should not normally be quashed. This Court should not embark upon an enquiry as to the reliability or genuineness of the material and the allegations made in the FIR while exercising jurisdiction under Section 482 of the CrPC.

5.10) Quashing of the FIR should be an exception rather than the ordinary rule. That criminal proceedings should not be quashed in exercise of the power under Section 482 of the CrPC when, after a thorough investigation, the chargesheet has been filed.

6) Perused the entire record. The Applicants are flat purchasers and Respondent No. 2 is the builder/developer. The Applicants had some issues in respect of the flats and the amenities/facilities provided by Respondent No.2. Certain consumer disputes are filed and pending. Respondent No.2 has also

filed a civil suit claiming damages. In this background of facts, at the instance of the Applicants meetings were held for undertaking settlement talks and exploring a possible settlement. It is the case of Respondent No.2 that, during the said meetings which were held on 9th May 2017 and 12th June 2017, the Applicants threatened and demanded Rs 25,00,000/- each for settling the issues, failing which the Respondent No.2 was warned and threatened with more trouble and obstacles in completing the last wing/building of the project. The Respondent No. 2 has therefore alleged that, the Applicants have committed an offence under section 385 read with section 34 of the Indian Penal Code.

7) Extortion in the normal parlance would mean an act of getting something, in most of the cases money from a person by using force, intimidation or threats. An exercise of undue or illegal use of power or taking advantage of the office held will also come under the term of extortion. Extortion is an act of forceful arm twisting or an act of extracting by force and or threat.

8) Section 383 of the Indian Penal Code (now section Section 308 of the Bharatiya Nyaya Sanhita, 2023) defines the term Extortion as under :-

“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”...

9) To invoke and attract the offence of Extortion the essential ingredients are (i) intentionally putting a person in fear of injury to himself or another and (ii) dishonestly inducing the person so as to put in fear to deliver to any person any property or valuable security. What the section primarily requires is that, at the first instance the act has to be “intentional” and the person should be put “in fear of any injury”. The act of threat or the threat is required to be intentional and of such gravity or intensity that it mentally throws off balance and unsettles, the person so threatened and tends to take away from his act and actions the element of free voluntary action which would constitute consent. The intention and threat of fear of injury are fundamental to invoke the offence of extortion. The person being put in fear is essential to complete and commit an offence of extortion.

10) Section 385 of the Indian Penal Code (now Section 308(3) of the Bharatiya Nyaya Sanhita, 2023) with which the Applicants are charged reads as under :-

“385. Putting person in fear of injury in order to commit extortion.—

Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

11) Perusal of section 385 of the IPC, indicates and points out the difference between inchoate and completed offence of extortion. The section

recognizes the said difference. Section 385 of the IPC refers to an attempt to commit extortion whereby a person puts the other person in fear of injury or an attempt to excite such fear but where there is no delivery of property. The section punishes the act of putting the person “in fear of injury” in order to commit extortion. Here again the act of threat or the act of putting the person in fear is required to be intentional and of such gravity or intensity that it mentally throws off balance and unsettles, the person so threatened that it tends to take away from his act and actions the element of free voluntary action which would constitute consent. Also pertinent to note that, the injury has to such which the accused can inflict. A general and bare threat with nothing more cannot amount to extortion. It is also necessary to make note of the fact that both the sections do not quantify any amount nor is the offence of extortion dependent on the quantum of money.

12) The facts of the present case indicate that, there is a litigation history between the Applicants and Respondent No.2. The parties have filed various complaints/legal proceedings against each other i.e. both civil and criminal proceedings. On 2nd December 2016, the Applicants have filed before the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai Complaint No.1208 of 2016. The prayers of the Complaint No.1208 of 2016 read thus:-

“37. The complainants therefore respectfully pray that:

a) This Honourable Commission be pleased to hold and declare that the opposite party has provided deficiency in the

services.

b) This Honourable Commission be pleased to direct the opposite party to form a co-operative society as per the obligation casted on him, in view of para no.12 of the registered agreement.

c) This Honourable Commission be pleased to direct the opposite party to execute the conveyance in view of the obligation mentioned in para 13 of the registered agreement.

d) This Honourable Commission be pleased to direct the opposite party to carry out the repairs in respect of the terrace and further direction to provide the facilities which were agreed, including garden, rain water harvesting and generator facility etc within such time as this Honourable commission may deem fit and proper.

e) This Honourable Commission be pleased to direct the opposite party to refund the amount of Rs.18,101/- towards the access charges as the lesser area was provided by the opposite party.

f) This Honourable Commission be pleased to issue permanent injunction restraining the opposite party from carrying out any construction adjacent to the building where the complainant is residing, for the reasons mentioned in the memo of this complaint.

g) This Honourable Commission be pleased to award the compensation of Rs.15,00,000/- in favour of the present complainants.

h) This Honourable Commission be pleased to award the litigation cost of Rs.2,50,000/- in favour of the present complainants.

i) Any other order as deemed fit and proper by this Honourable Commission be granted in favour of the present complainants.”

In the said proceedings an Order dated 10th January 2017 has been passed which restrains the Respondent No. 2 from carrying out further work/construction adjacent to the subject building till further order.

13) On 13th July 2016, Respondent No.2 has also filed a Special Civil Suit No. 91 of 2016 before the Civil Judge (Senior Division) Vasai under section 34 of the Specific Reliefs Act for perpetual injunction and damages.

The prayers in the Suit read as under :-

"22) It is, therefore prayed that, this Hon'ble Court may be pleased to:

a) Declare that, the Defendants have defamed the Plaintiff by the letter dated 18.10.2015 sent by the Defendants to Smt. Pravinatai Thakur "आता सदरहू बिल्डर श्री. आशुतोष जोशी हा सोसायटीतील सदस्यांवर विविध मार्गांनी दबाब आणत आहे. सोसायटीतील महिला सदस्यांना दूरध्वनीद्वारे रात्री भेटायला या असे अतिशय खालच्या पातळीवरचे संभाषण करीत आहेत. त्यामुळे सोसायटीतील सदस्य अत्यंत तणावाखाली जीवन जगत आहेत. अशा परिस्थितीत आमच्या सोसायटीतील सदस्यांचे काही बरेवाईट झाले तर त्यास सर्वस्वी श्री. आशुतोष जोशी जबाबदार राहातील." is defamatory of the Plaintiff.

b) Declare further that, the Plaintiff is entitled for the damages from each of the Defendants and each of the Defendants is liable to be pay to the Plaintiff a sum of Rs.25,00,000/- as and towards the damages.

c) Direct each of the Defendants to pay to the Plaintiff a sum of Rs.25,00,000/- as and towards the damages for defaming him.

d) Restrain the Defendants from defaming the Plaintiff in any manner for any reason in future, by the Order of Perpetual injunction of this Hon'ble Court;

e) Grant interim and ad-interim reliefs in terms of prayer clause (d) above, pending hearing and final disposal of this suit;

f) Any other and further relief;

g) Costs of this suit be provided for."

14) On 14th July 2016, Respondent No 2 has filed a Criminal Complaint No 2033 of 2016 before the Judicial Magistrate (First Class) at Vasai under section 500 of the Indian Penal Code.

15) The FIR in the present case is dated 13th June 2017. Perusal of the FIR would indicate that, the Applicants had some issues in respect of the flats and the amenities and facilities provided by Respondent No.2. The parties have filed legal proceedings both civil and criminal. In this background facts, at the instance of the Applicants meetings were held for undertaking settlement talks. It is the case of Respondent No.2 that, during the said meetings which were held on 9th May 2017 and 12th June 2017, the Applicants demanded under threats Rs 25,00,000/- each for settling the issues failing which the Respondent No.2 was warned and threaten with more trouble and obstacles in completing the last building of the project. Pertinent to note that in the FIR, Respondent No.2 has referred only to the meeting of 9th May 2017. The meeting of 12th June 2017 finds no reference in the FIR which is recorded on 14th June 2017. The relevant portion of FIR is reproduced here for ready reference, which reads thus:-

"मी व माझा सी.ए. अशुतोष विध्यांस असे आम्ही वरील पत्त्यावर फार्म हाऊस नावाच्या हॉटेल मध्ये ८.३० वा.पोहचलो त्यावेळेस १) पवन सरकाळे २) देवेन कोचरेकर ३) राजन वझे ४) राजदिप साळवी ५) अनिश सावे. ६) जयेश शहा ७) देवेद्र गोंडले हे आम्ही पोहचण्या अगोदर तेथे हजर होते.त्यावे आम्हा एकत्र बसलो असता पवन सरकाळे यांनी सर्वांच्या वतीने मला प्रपोजल दिले की तुम्ही आम्हाला प्रत्येकी २५ लाख रुपये द्यावेत तरच तुम्हाला आमच पासुन होणारा त्रास व ए विंगचे बांधकाम करण्यास आमच्या पासुन होणारा अडथळा निर्माण होणार नाही जर तुम्हा आमची मागणी मान्य केली नाही तुम्हाला होणारा त्रास आणखी वाढेल व तुम्ले जगणे कठीण होईल. तसेच देवेन कोचरेकर यांनी सांगितले की, आम्ही व आमच्या बायकांची मिटींग झाली अस त्यात असे ठरले आहे की आमचे बी विंग मधील प्लॅट विकुन ते पैसे आम्हीच घेवु व तुम्ही आम्हाला प्रत्येकी २५ लाख दिले तर ते घेवुन आम्ही तेथुन निघु जालु म्हणजे तुम्हाला कोमत्याही प्रकारचा त्रास होणार नाही. त्या सोबत इतर जणांनी पण

आशाच प्रकारचे माझ्या सोबत. संभाषण केले होते. त्यानंतर मी त्यां सांगितले की माझ्या कडे सध्या इतके पैसे नसल्याने मी तुम्हाला सध्या एवढे पैसे देवु शकत नाही, मी विचार करुन तुम्हाला किती पैसे देवु शकतो ते सांगतो अ बोलुन मी व माझा सी.ए..अशुतोष विध्यांस तेथुन निघुन आलो असुन सदर वेळी झालेल्या संभाषणाची व्हीडीओ रेकॉर्डिंग मी स्वतः केली असुन ती साद करीन.

त्या नंतर पवन सरकाराळे यांनी मला वेळोवेळी फोन करुन आपण कधी भेटायचे व पैशाचे काय झाले या बाबत विचारणा केली. नमुद चरील सा इसम माझ्या बिल्डींग मध्ये प्लॅट विकत घेण्यास येणा-या व्यक्तींना बांधकामा विषयी खोटी माहीती दिली. तसेच वरील नमुद माझ्या विरोधात महानग पालीका वसई विरार, दुय्यम निबंधक ठाणे, पालघर व मंत्रालय मुंबई व इतर ठिकाणी खोटे अर्ज करुन मला भिती दाखवुन मानसिक त्रास देण्याचे काम केल आहे.”

- 16) A reference to the meeting of 12th June 2017 is made in the supplementary statement recorded on 14th June 2017. There are 2 statements recorded on 14th June 2017. It is in this statement that, Respondent No.2 alleges that threats were used and given of serious consequences. That, under the threats Respondent No.2 offered and agreed to give Rs 5 lacs to each of the persons. The Respondent No. 2 has contended that, the conversation during the meeting were recorded and that he has with him the said transcripts. Pertinent to note that in the other supplementary statement of even date Respondent No.2 has stated that, certain conversations which took place on 12th June 2017 could not be recorded as he did not realize as to whether the recording was on or off. The relevant portion of the statement reads as under:-

"दिनांक १२/०६/२०१७ रोजी मुंबई काळा गौडा येथे असलेले पँन्ट्री हाऊस मध्ये जे पवन सरकाराळे व त्यांचे साथिदार २ इसम यांचेत व माझ्यात जे संभाषण झाले ते माझ्या मोबाईल मध्ये रेकॉर्डिंग करीत असतांना काही कारणा मुळे संभाषणातील काही रेकॉर्डिंग झाले नाही. आम्ही सर्वज्ञान समोरासमोर बसलो

असल्याने रेकॉडींग चालू आहे अगर बंद आहे हे मी पाहू शकलो नाही त्यामुळे आमच्यातील संभाषनाचे काही भाग रेकॉडींग झाले नाही हे मला रेकॉडींग ऐकल्यानंतर लक्षात आले. तसेच दि. ०९/०५/२०१७ रोजी फार्म हाऊस, वसई येथील आमचे झालेल्या मिटींग मधील संपूर्ण संभाषनाचे रेकॉडींग माझ्या मोबाईलमध्ये पूर्णपणे झालेले नाही.”

17) Respondent No.2 has filed an affidavit dated 2nd December 2019 wherein he has specifically averred that “I further say that the transcript consists of the entire recording done during the aforementioned 2 meetings. There is nothing in these transcripts that I have either added of my own nor have I excluded any part of the said recordings from these transcripts” Prima facie the contents of the supplementary statement and the Affidavit dated 2nd December 2019 are at a material variance in respect of the completeness of the recording. The Respondent No.2 has pursuant to the order dated 10th December 2019, passed by this Court, produced on record the entire transcript of the conversations at the said two meetings.

18) Perusal of the Chargesheet would indicate that, inter alia there are statements of witnesses i.e CA of Respondent No.2, the manager of Respondent No.2, the waiter and manager of the hotel where the meeting took place. The said witnesses have stated that the Applicants demanded Rs 25,00,000/- and gave threats to the Respondent No.2.

19) Pursuant to the Order dated 10th December 2019, (incorrectly mentioned as 20th December 2019) Respondent No.2 has filed an Affidavit dated 2nd December 2019 placing on record the copy of the transcripts of the recordings done during the meeting dated 9th May 2017 and 12th June 2017.

The transcripts, on a prima facie reading do not indicate any threat or any act of extortion. A cursory look at the transcripts, prima facie indicate that the parties had mutually agreed to meet for a round of settlement talks and explore the possibility of a amicable settlement. It is pertinent to note here and keep in mind that, the disputes and differences between the parties arise from certain defects and deficiencies in the flats and/or the amenities/facility in the residential complex. The meeting dated 9th May 2017 appears to arranged and the matters discussed by and between the parties over an elaborate dinner. The transcripts reflect a conversation which discusses at the outset the proposed food order for the dinner, the initial issues in respect of the deficiencies, the initial request made by the flat purchasers to shift (behind) the proposed construction of the 'A' wing by about 10 to 15 feet. The grievances raised by the Applicant prima facie appear to be that of obstruction of air and light to their respective flats due to the proposed construction and the other difficulties faced by the Applicants and their families. There is also a discussion of the litigations filed both civil and criminal and the mental trauma and harassment caused to the parties due to the same. The entire tone and tenure of the conversation, as is prima facie evident from the transcript is that, of a discussion, negotiation and an attempt to settle the issues. It prima facie appears that, the Applicants being flat purchaser demanded as compensation what they thought was appropriate for all the trouble and stress they and their respective families had undergone. The Applicants had also

proposed to sell their flats and move out. A request was made to Respondent No. 2 to purchase their flats or suggest a name of the broker through whom they can sell the flats and move out. The Applicants had also showed their willingness to withdraw the proposal for formation of the society, withdraw the consumer complaint and not proceed with the contempt notice etc.

20) Perusal of the transcripts would prima facie indicate that, the Respondent No.2 has had a proper and coherent dialogue with the Applicants. The Respondent No.2 has negotiated the amount on the ground that the market conditions are not good and has specifically refused to purchase the flats. The transcript would indicate that, the previous round of settlement talks only revolved around shifting (behind) the proposed construction by 10 to 15 feet. The transcripts would indicate that, during the meeting, the Applicants showed their willingness to file appropriate undertakings and affidavits in Court and withdraw the proceedings. The transcripts prima facie do not indicate that the Respondent No. 2 was put in any fear of injury or even threatened as is would be required to make out a offence of extortion.

21) As regards the transcripts in respect of the meeting dated 12th June 2017, the same are also on the same lines. In this transcript, in fact, it prima facie appears that there was a negotiation in respect of the proposed settlement /compensation amount. The parties appear to have discussed the minimum and maximum offers and counter offers. There is a detailed discussion in respect of earlier conduct of the parties in forwarding affidavits

etc.

22) From a prima facie perusal of the transcripts, it clearly does not appear that the Respondent No.2 was threatened or put in the fear of any injury. On a perusal of the transcript, it appears that there is no threat or conduct which can be termed as extortion. There is no act of intentional threat of such gravity as would have mentally thrown the Respondent No.2 of balance or unsettled the Respondent No.2. From the transcripts it is clear that, what was discussed was a plain and simple settlement proposal and matters/issues incidental to the said settlement. Prima facie, the transcript does not reflect or attribute any intention to the Applicants to threaten or put the Respondent No.2 in fear of any injury. In fact, the Respondent No. 2 has discussed the settlement offer, given his offer and had a general discussion and conversation. In this view of the matter, I am of the considered view that in the facts of the present case not even a prima facie case has been made out to invoke the provisions of section 385 of the Indian Penal Code. The contention of Respondent No.2 that, the total amount demanded by the 7 Applicants would amount to Rs 1,75,00,000/- and that as the said amount was highly disproportionate, it therefore amounts to extortion cannot be accepted in the peculiar facts of this case. Only demanding a exorbitant and/or disproportionate amount by itself does not attract the provisions of Section 385 of the IPC nor make out any offence of extortion. The essential ingredients as envisaged by the sections are a intentional threat or fear of

injury and dishonestly inducing the person so threatened or under fear of injury to deliver property. A bare cursory perusal of the transcripts, prima facie indicate that the no case of any threats, much less extortion under Section 385 of the IPC is made out. The transcripts have a completely different story to tell. A general and bald statement, that a pending litigation shall be pursued and proceeded in accordance with law and the consequent adverse orders, if any, may cause hindrance or obstacles cannot be termed as extortion of threat. Persuing litigation in accordance with law in the alternative to a settlement cannot be perceived as an act of extortion.

23) The learned Advocate appearing for the Respondent No.2 has placed reliance on judgment of the Division Bench of this court in the case of *Rajesh @ Dharmesh Vs. State of Maharashtra (Supra)* to contend that to make out a case of extortion actual payment is not necessary. In my opinion, the said judgment has been cited out on context as in the present case the section involved is Section 385 of IPC which deals with an attempt of extortion. Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of *State of Haryana & Ors. Vs. Bhajan Lal & Ors (Supra)* to contend that the case of the Petitioner does not fall in any of the seven categories mentioned in paragraph 102 thereof and therefore no case of quashing is made out. Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of *State of Odisha Vs. Pratima Mohanty (Supra)* to contend that, once a chargesheet is filed after due investigation the same should not be

quashed.

24) It would be necessary to point out here that the argument of the Petitioner is that the FIR is a counter blast and a mala fide arm twisting tactics to pressurize the Petitioners into giving up their legal fight. The Petitioners relying on the litigation history and the delay in filing the FIR have alleged mala fides and termed the FIR as a malicious prosecution.

25) Considering the arguments advanced and the case law which has been relied upon, it will necessary to refer to the judgment of the Hon'ble Supreme Court in the case of *Anand Kumar Mohatta v. State (NCT of Delhi)*, reported in (2019) 11 SCC 706 reads as under:-

“14. First, we would like to deal with the submission of the learned Senior Counsel for Respondent 2 that once the charge-sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in Joseph Salvaraj A. v. State of Gujarat [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23] . In Joseph Salvaraj A. [Joseph Salvaraj A. v. State of Gujarat, (2011) 7 SCC 59 : (2011) 3 SCC (Cri) 23] , this Court while deciding the question whether the High Court could entertain the Section 482 petition for quashing of FIR, when the charge-sheet was filed by the police during the pendency of the Section 482 petition, observed: (SCC p. 63, para 16)

“16. Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge [Joesph Saivaraj A. v. State of Gujarat, 2007 SCC OnLine Guj 365] could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, charge-sheet,

documents, etc. or not.”

15. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 CrPC and that this Court is hearing an appeal from an order under Section 482 CrPC. Section 482 CrPC reads as follows:

“482. Saving of inherent powers of the High Court.— Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

16. There is nothing in the words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 CrPC even when the discharge application is pending with the trial court [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636, para 7 : 2000 SCC (Cri) 513. Umesh Kumar v. State of A.P., (2013) 10 SCC 591, para 20 : (2014) 1 SCC (Cri) 338 : (2014) 2 SCC (L&S) 237] . Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialised into a charge-sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.”

The Hon’ble Supreme Court has categorically observed that only because the chargesheet has been filed the powers and jurisdiction of the High Court under Section 482 of the CrPC does not get restricted. The ambit, scope and principles of invoking the inherent jurisdiction under Section 482 of CrPC still remain the same and unaltered.

26) Considering the factual matrix of the present case and the allegations made it is also necessary to refer to the judgment of the Hon'ble Supreme Court in the case of *Moh. Wajid And Anr. Vs. State of Uttar Pradesh And Ors.*, reported in (2023) 20 SCC 219, wherein it has been observed that: -

“35. However, as observed earlier, the entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] . The parameters are : (SCC pp. 378-79, para 102)

“102. ...

(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 Act concerned (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 Act concerned, 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.”

In our opinion, the present case falls within Parameters Nos. 1, 5 and 7, respectively, referred to above.

36. *At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely.*

37. *We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.*

38. *In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a*

period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

27) In view of the aforesaid facts and circumstances, the discussion noted hereinabove and the law as laid down by the Hon’ble Supreme Court, I am of the considered opinion that the Applicants have made out a case for this Court to exercise its inherent powers under section 482 of the Code of Criminal Procedure and to quash and set aside the FIR and the resultant chargesheet so as to meets the ends of justice and prevent the abuse of the process of the law.

28) Considering the facts of the present case and for the aforestated reasons, I am of the considered view that, the Applicants have made out a prima facie case for this Court to exercise its inherent powers under Section 482 of the CrPC to prevent the abuse of the process of law and to ensure that the ends of justice are meet. Considering the peculiar facts of the present case, in my considered view, the present case fits in categories 1 and 7 as laid down by the Hon’ble Supreme Court in the case of *State of Haryana & Ors. Vs. Bhajan Lal & Ors., (Supra)*.

29) In view thereof, the Application is allowed in terms of prayer clause (a) and (a)(I) .

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(RANJITSINHA RAJA BHONSALE, J.)