

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 27-07-2021

Pronounced on 07-09-2021

WPCR No. 133 of 2017

- Shatrughan Singh Sahu S/o Shri Ganpat Ram Sahu, Aged About 37 Years Occupation Advocate Practicing At District And Sessions Court, Dhamtari Chhattisgarh, R/o Amaltaspuram, Rudri Road, Dhamtari, District Dhamtari Chhattisgarh, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Department Of Law And Legislative Affairs, Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh, Chhattisgarh
2. The Collector, Dhamtari, District Dhamtari Chhattisgarh,
3. The Superintendent Of Police, Dhamtari, District Dhamtari Chhattisgarh,
4. The Police Station/ Station House Officer Rudri, District Dhamtari Chhattisgarh,
5. Kuleshwar Chandrakar S/o Shri Bisahu Ram Chandrakar Aged About 49 Years Occupation Director Of Bore Well, R/o Sandha Chowk, Kurud, Police Station Kurud, District Dhamtari Chhattisgarh,

---- Respondents

For Petitioner	:	Mr. Roop Naik and Sanjeev Sahu, Advocates.
For respondents No. 1 to 4/ State.	:	Mr. Gurudev I Sharan, Govt. Advocate.
For respondent No.5	:	Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. ORDER

- 1) The petitioner, who is an Advocate by profession, has filed the present writ petition (cr.) challenging the registration of First Information Report against him under Sections 384 and 388 of IPC on the basis of complaint filed by respondent No.5 Kuleshwar Chandrakar before the Police Station Rudri in connection with Crime No. 106 of 2015 on 9-10-2015 and subsequently, the

Police has submitted the final report before the learned Chief Judicial Magistrate, Dhamtari, now the case has been transferred to learned Judicial Magistrate First Class, Dhamtari, bearing Criminal Case No. 1405 of 2015 (State vs. Shatrughan Saho).

- 2) Brief facts, as projected by the petitioner in the present petition are that the Government of Chhattisgarh has enacted the Shakambhari (Nal-Jal) Scheme for benefit of agriculturists by granting subsidy. The beneficiary farmers applied for irrigation instrument in the Department of Agriculture. As per scheme, the State Government is giving them instrument and subsidy after following certain procedure. The Rural Agricultural Extension Officer, Village and Post Bhatgaon, Tahsil Kurud, District Dhamtari, Agricultural Development Officer, Village and Post Charmudiya, Tahsil Kurud, District Dhamtari, Agriculture Sub Divisional Officer, Collectorate Dhamtari, Deputy Director Agricultural Collectorate, Dhamtari and respondent No.5/complainant Kuleshwar Chandrakar and Roshan Chandrakar, Proprietor of Shri Ram Bore-wells have committed gross embezzlement at the time of granting subsidy to the concerned agriculturists, therefore, the petitioner made a complaint before the Collector, Dhamtari on 3-3-2015 and 24-4-2015 with regard to corruption done by them.
- 3) On 18-3-2015 the petitioner made a complaint before the Superintendent of Police, Dhamtari for registration of FIR against the corrupt employee/officers. Again, the petitioner along with other person namely Naresh Kumar has also filed a complaint before the Superintendent of Police, Dhamtari stating that the persons involved in the embezzlement under the Shakambhari (Nal Jal) Scheme threatened them to cause death. But the respondent authorities i.e., Collector and Superintendent of Police, District Dhamtari and Director of Agriculture Department Raipur did not take any action against the corrupt persons including the respondent No.5.
- 4) The Superintendent of Police has directed Rudri Police Station to enquire into the matter. Though the statements of persons namely Manik Ram, Tomar Sahu, Abhimanyu and Devendra Kumar have been recorded and all have supported the case, still Police has not taken any action against the erring officials. Being aggrieved, the petitioner has filed complaint under Section 156(3) of Cr.P.C before the learned District and Sessions Court, Dhamtari for registration of offence under Prevention of Corruption Act. On

9-10-2015, the complainant Kuleshwar Chandrakar lodged FIR against the petitioner contending that the petitioner has demanded Rs.25,00,000/- by way of extortion. Police has registered the FIR without conducting any preliminary enquiry. Though the petitioner was present at his office along with other advocates on 9-10-2015, still he has been roped in crime number 106 of 2015 for committing alleged offence under Sections 384 and 388 of IPC.

- 5) On 20-12-2015 the petitioner has submitted an application before the Police Station Rudri and prayed for an opportunity of defence and also submitted the representation on 24-12-2015 along with documents, but the same has not been considered. On 31-12-2015 when the petitioner was going to court, at that time four persons came in motorcycle and threatened the petitioner by pressing and compelled him to do compromise and withdraw the complaint. On 31-12-2015 the petitioner made a complaint before the Superintendent of Police, Dhamtari but no action has been taken. The Police on the strength of the FIR lodged by respondent No. 5, after investigation, registered the offence and final report has been submitted before the Chief Judicial Magistrate, Dhamtari. Now the case is transferred to the court of Judicial Magistrate First Class, Dhamtari and learned Magistrate registered the case bearing Criminal Case No. 1405 of 2015.
- 6) On the above factual matrix of the case, the petitioner prayed for quashing of FIR registered against the petitioner in connection with Crime No. 106 of 2015 at Police Station Rudri, District Dhamtari for offence under Sections 384 and 388 of IPC.
- 7) This Court issued notice to the respondents and in pursuance of notice, respondent No.5 has entered his appearance and filed his return. The State counsel has also filed their return in which they have stated that on the basis of complaint made by the petitioner, an enquiry has been conducted by the Additional Collector & Inquiry Officer, Dhamtari has submitted his report on 28-11-2016 wherein charges levelled against respondent No.5 and other Government officials have been found false and baseless. It has also been stated that the petitioner being an Advocate indulged in making complaint with regard to corruption under the scheme of the State Government and requesting for registration of FIR. It is further contended that the petitioner made another complaint before the Superintendent of

Police, District Dhamtari, regarding corruption being made in the Rajya Poshit Sukshma Sichai Yojna by one Roshan Chandrakar which was enquired into and upon enquiry no incriminating was found for taking cognizance and the complaint of the petitioner was found to be false and baseless and copy of the report has been forwarded by the Incharge of Police Station, Dhamtari to the Superintendent of Police, Dhamtari on 7-2-2015. He would further submit that the charges leveled against respondent No.5 are false and baseless, therefore, the petition filed by the petitioner deserves to be dismissed by this court.

- 8) Complainant/respondent No.5 has also filed his return in which he denied the allegations made by the petitioner and would submit that as per material collected by the Investigating Officer case under Section 384 and 388 of IPC is made out. It has been further contended that the petitioner is a habitual complainer and blackmailing the people and he has filed a complaint against the Officer of the Agriculture Department alleging certain irregularities and thereafter vide letter dated 24-10-2015 has withdrawn the same which clearly shows the conduct of the petitioner itself. He would further submit that *prima facie* the allegations leveled against him are made out, therefore, the writ petition, at this juncture is not maintainable and is liable to be dismissed by this court.
- 9) The petitioner has filed his rejoinder on 24-6-2021 and would submit that at the time of incident, the petitioner was in the court of Chief Judicial Magistrate to argue the criminal case and in this regard a copy of the order sheet thereof has also been annexed. He would further submit that he has been falsely implicated in this case as he was not present at the time of alleged incident, therefore, the story projected by the complainant is false, baseless and cannot be accepted at this juncture and would pray that the petition filed by him be allowed and the criminal proceeding be quashed. In support of his arguments, he has relied upon the judgments rendered by Hon'ble Supreme Court in **State of Haryana vs Bhajanlal reported in 1992 Suppl. (1) SCC 335**.
- 10) I have heard learned counsel for the parties and perused the documents.

11) Before advertent to the facts of the case, it is necessary to examine the provisions of Sections 24, 43, 44, 383, 384 and 388 of IPC which are extracted as under as well as contents of the FIR.

Section 24 in The Indian Penal Code. 24. **“Dishonestly”**. —Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

[Section 43](#) of the IPC lays down the word 'illegal' is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be 'legally bound to do' whatever it is illegal in him to omit.

[Section 44](#) of the IPC lays down that the word 'injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

"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".

“Section 384- Punishment for extortion- Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Section 388- Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc. - Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with (imprisonment for life), or with imprisonment for a term which may extend to ten years or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term be one punishable under Section 377 of this Code,

may be punished with imprisonment for life”.

FIR

“अभियोगी सूचनाकर्ता थाना उपस्थित आकर एक लिखित शिकायत पत्र प्रस्तुत किया जिसमें अभियोगी आवेदक व उसके साथी रोशन चंद्राकर को आरोपी द्वारा शिकायत पत्र को वापस करने के बदले 25 लाख रुपये की मांग किया पैसा नहीं देने पर झूठा 420 प्रकरण में फंसाकर जेल भिजवाने की धमकी देना लेख है नकल आवेदन जैल है प्रति श्रीमान थाना प्रभारी जी थाना रूद्री जिला धमतरी (छ.ग.) विषय शत्रुहन सिंह साहू (अधिवक्ता) पिता गणपत राम साहू अमलतासपुरम रूद्री रोड धमतरी द्वारा हमें ब्लैकमेलकर भयादोहन कर अवैध वसूली की शिकायत करने बाबत महोदय जी मैं कलेश्वर चंद्राकर S/o स्व. श्री बीसाहू राम चंद्राकर ग्राम बगौद जिला धमतरी तह. कुरुद का निवासी हूँ आज दिनांक 9/10/15 को रोशन कुमार चंद्राकर श्रीराम बोरवेल के प्रोपराइटर एवं तेमन लाल साहू S/o बोलीराम साहू बगौद के साथ धमतरी जिला दिन में कार्यालय जा रहे थे, लगभग 11 बजे के आस पास जिला कार्यालय रोड में सेंट जेवियर स्कूल के पहले मेरे गाड़ी के पीछे चल रही गाड़ी ने दो तीन बार हार्न दिया। जिससे मैंने अपनी गाड़ी साइड की तो पीछे गाड़ी वालों ने अपनी गाड़ी आगे बढ़ाकर दरवाजे की खिड़की से रूकने का हाथ से ईशारा किया और स्वयं अपनी गाड़ी रोक दी तब उसके पीछे कुछ अंतराल में मैंने भी अपनी गाड़ी रोक दी गाड़ी रोकने के बाद सामने की गाड़ी से शत्रुहन साहू (अधिवक्ता) बाहर निकला तो मैं भी अपनी गाड़ी से बाहर निकलकर जय हिंद कहकर उनका अभिवादन किया मेरे साथ ही गाड़ी से रोशन चन्द्राकर भी बाहर निकला व जय हिंद भाई साहाब कह उनका अभिवादन किया तेमन लाल जी गाड़ी में ही बैठा था इतने में शत्रुहन साहू चलकर हमारे गाड़ी के पास आ गया तब हम लोग भी गाड़ी के सम्मुख जो खाली जगह जहाँ आकर शत्रुहन खड़ा हुआ वहाँ पहुंच गया इतने में शत्रुहन बोले क्या हाल है मेरा क्या कर रहे हो? तब रोशन ने कहा जी समझ में नहीं आया तो शत्रुहन बोले अनजान मत बनो तुम्हारे खिलाफ किसानों से मिलकर अपने हिसाब से साईट तैयार कर पुख्ता सबूत इकट्ठा कर लिया हूँ साथ ही किसानों को इतना समझा दिया हूँ मैं जैसा कहूंगा वैसा ये कहेंगे, यदि 25 लाख देने हो तो मैं तुरंत शिकायत वापस ले लुंगा जैसा कि डिप वाले केस में किया था और तुम दोनों को कुछ नहीं होगा इसकी गारंटी है और नहीं दोगे तो तुम दोनों का पुरा व्यापार और समाजिक प्रतिष्ठा इज्जत सब मिट्टी में मिला दुँगा कहीं मुंह दिखाने लायक नहीं रहोगे और तो और तुम्हें यह भी बता दु धारा 420 एवं अन्य धाराओं में फंसाकर पुरी जिंदगी जेल में सड़ा दुंगा

सोच लो 25 लाख देने हो तो मामला यहीं खत्म नहीं तो तुम दोनों को कोई नहीं बचा सकता इस पर मैंने कहा आप गलत कह रहे हो हमें नाहक परेशान कर रहे हो हमने ऐसा कुछ भी नहीं किया है जिसके लिये आपको 25 लाख दे तब शत्रुहन सिंह बोला जेल जाओगे तो समझ में आयेगा इतना कहकर गाड़ी चालू कर निकल गया घटना क्रम के समय कार में तेमन लाल साहू S/o बोलीराम साहू ग्राम बगौद बैठा था जो घटना क्रम को देखा व सुना है उस वक्त घटना स्थल पर राजु गुप्ता धमतरी, टीकम कुर्रे बगौद निवासी एवं भुपेन्द्र चंद्राकर राखी निवासी उपस्थित थे जो इस घटना को देखे व सुने है इस प्रकार शत्रुहन सिंह साहू ने मुझे एवं रोशन चंद्राकर दोनों को व्यापार व्यवसाय समाज में हमारी यश प्रतिष्ठा का भय दिखा कर व झूठे केसों में कोर्ट कचहरी में फंसा देने की धमकी व भय दिखाकर हमसे अवैध रकम वसूली करने हेतु ब्लॉक मेलिंग भयादोहन का कार्य कर रहा है धारा 420 व अन्य धाराओं के तहत जीवन भर जेल में सड़ा देने की धमकी देकर अवैध वसूली करना चाह रहा है जिससे हमें सुरक्षा देकर एवं आरोपी शत्रुहन साहू पर विधी सम्मन उचित कार्यवाही हेतु इस आवेदन पर उचित कार्यवाही करने की कृपा करें हस्ताक्षर अस्पष्ट कुलेश्वर चंद्राकर अपराध पंजीबद्ध कर विवेचना में लिया गया।”

12) Hon'ble the Supreme Court in State of West Bengal vs. Committee for Protection of Democratic Rights West Bengal, reported in 2010(3) SCC 571 has observed in para 57 which is extracted as under:

“57.As regards the power of judicial review conferred on the High Court, undoubtedly they are, in a way, wider in scope. The High Courts are authorised under [Article 226](#) of the Constitution, to issue directions, orders or writs to any person or authority, including any government to enforce fundamental rights and, "for any other purpose". It is manifest from the difference in the phraseology of Articles 32 and 226 of the Constitution that there is a marked difference in the nature and purpose of the right conferred by these two Articles. Whereas the right guaranteed by [Article 32](#) can be exercised only for the enforcement of fundamental rights conferred by Part III of the Constitution, the right conferred by [Article 226](#) can be exercised not only for the enforcement of fundamental rights, but "for any other purpose" as well, i.e. for enforcement of any legal right conferred by a Statute etc.”

- 13) Learned counsel for the respondent No.5 has filed his written synopsis reiterating the stand which he has already taken in the petition. He has relied upon the judgment of Hon'ble High Court of Madhya Pradesh in **Sudha Tripathi vs State of MP and another passed in M.Cr.No.11871 of 2019 decided on 2-5-2019, Satvir Singh and others vs. State of Punjab and another, reported in (2001) 8 SCC 633, Abhyanand vs. State of Bihar, reported in AIR 1961 SCC 1698** and would submit that the *prima facie* offence for extortion is made out even from judgment referred to above, it is evident that offence under Section 511 for punishment of attempting to commit offence is made out and he would submit that since the petitioner has attempted to commit an offence, as such, charges are *prima facie* made out. He would further submit that the petitioner was not present at the place of occurrence of the offence by saying that he was before the Court, is his defence, this cannot be examined by this Court. To substantiate this submission, he would rely upon the judgment of Hon'ble the Supreme Court in **Vinod Raghuvanshi v. Ajay Arora and others, reported in 2013 (10) SCC 581** and in **State of Bihar vs. PP Sharma and another, reported in 1991 (AIR) SC**. In **State of A.P. vs. Goloconda Lingaswamy and another reported in 2004 AIR SC 3967**, Hon'ble the Supreme Court has held as under:

“It is the material collected during the

investigation and evidence led in court which decides the fate of the accused person. The allegations of malafides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding”.

14) He would further relied upon the judgment of Hon'ble the Supreme Court in **State of Orrisa Vs. Devendra Nath Padhi reported in (2005) 1 SCC 568** and would pray that the writ petition may finally dismissed.

15) Learned counsel for the petitioner would submit that from perusal of the FIR it is nowhere reflected that on extortion made by the petitioner, complainant/respondent No.5 has delivered any valuable property to the petitioner, as such, he has not committed offence under Section 384 of IPC. Even from perusal of the final report, it is clear that the documents submitted by the investigating agency regarding statements of the witnesses, none of the witnesses has stated that on extortion made by the petitioner by demanding Rs.25,00,000/- from respondent No.5. The respondent No. 5 has given Rs.25,00,000/- to the petitioner, as such, there is no ingredient of offence under Section 384 of IPC is made out.

16) It would be evident from the reading of [Section 383](#) of the IPC that the ingredients of 'extortion' are; (i) the accused must put any person in fear of injury to that person or any other person; (ii) the putting of a person in such fear must be intentional; (iii) the accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security; (iv) such inducement must be done dishonestly. The terms 'dishonestly', 'illegally' and 'injury' used in "Section 383 of the IPC [and in](#) "[Sections 24, 43 and 44](#) of the IPC respectively. On a careful consideration of the above definitions and ingredients what appears is that if someone puts the others intentionally in fear to any injury and thereby, dishonestly induces that person who has been put into fear to deliver to the person any property or valuable security or anything signed or sealed or which may be converted into valuable security shall be liable to be punished for 'extortion'.

17). Thus, what is necessary for constituting an offence of 'extortion' is that the prosecution must prove that on account of being put in fear of injury, the victim was voluntarily delivered any particular property to the man putting him into fear. If there was no delivery of property, then the most important ingredient for constituting the offence of 'extortion' would not be available. Further, if a person voluntarily delivers any property without there being any fear of injury, an offence of 'extortion' cannot be said to have been committed.

18) Hon'ble Supreme Court in **R.S. Nayak vs. A.N. Antulay and another, reported in (1986) 2 SCC 716**, has held in para 60 and relevant portion thereof is extracted as under:

“60. Before a person can be said to put any person to fear of any injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. If all that a man does is to promise to do a thing which he is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion. We agree with this view which has been indicated in *Habibul Razak v. King Emperor*, A.I.R. 1924 All 197. There is no evidence at all in this case that the managements of the sugar co-operatives had been put in any fear and the contributions had been paid in response to threats. Merely because the respondent was Chief Minister at the relevant time and the sugar co-operatives had some of their grievances pending consideration before the Government and pressure was brought about to make the donations promising consideration of such grievances, possibly by way of reciprocity, we do not think the appellant is justified in his contention that the ingredients of the offence of extortion have been made out. The evidence led by the prosecution falls short of the requirements of law in regard to the alleged offence of extortion. We see, therefore, no justification in the claim of Mr. Jethmalani that a charge for the offence of extortion should have been framed”.

19) Learned counsel for the petitioner would further submit that from bare perusal of FIR it is crystal clear that since the offence under Section 383 of IPC for extortion is not made out, then the offence under Section 388 of IPC will also not be made out. He would rely upon the judgment of Hon'ble

Supreme Court in case **Isaac Isanga Musumba and others vs. State of Maharashtra and others**, reported in 2014(15) 357, wherein Hon'ble the Supreme Court has held in para 3 and 4 which are extracted as under:

- “3. We have read the FIR which has been annexed to the writ petition as Annexure P-7 and we find therefrom that the complainants have alleged that the accused persons have shown copies of international warrants issued against the complainants by the Ugandan Court and letters written by Uganda Ministry of Justice & Constitutional Affairs and the accused have threatened to extort 20 million dollars (equivalent to Rs.110 crores). In the complaint, there is no mention whatsoever that pursuant to the demands made by the accused, any amount was delivered to the accused by the complainants. If that be so, we fail to see as to how an offence of extortion as defined in Section 383, IPC is made out. Section 383, IPC states that 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'. Hence, unless property is delivered to the accused person pursuant to the threat, no offence of extortion is made out and an FIR for the offence under Section 384 could not have been registered by the police.
4. We also find on the reading of the FIR, there is also an allegation that on 18th April, 2013 between 1 p.m. and 5.30 p.m. the accused persons illegally entered into the Head Office of the Company at Fort and demanded 20 million dollars (equivalent to Rs.110 crores) saying that they have international arrest warrants against the complainants and upon failure to pay the said sum the complainants will have to face dire consequences. It is because of this allegation in the FIR, the offence under Section 441, IPC is alleged to have been committed by the accused persons. On reading Section 441, IPC we find that intent to commit an offence or to intimidate, insult or annoy any person in possession of property is a necessary ingredient of the offence of criminal trespass. It is not disputed that there was a business transaction between the accused persons and the complainants. Hence, if the

accused persons have visited the premises of the complainants to make a demand towards their dues, we do not think a case of 'criminal trespass' as defined in Section 441, IPC is made out against the accused persons”.

20) On the other hand, learned counsel for respondent No.5 would submit that Hon'ble the High Court of Madhya Pradesh has occasion to consider the provisions of Section 384 of IPC and held that prima facie to establish the offence under Section 384 of IPC, the ingredient namely the accused should perpetuate the offence by extortion but the last subject of delivery of valuable assets was not taken by the complainant. It is clearly established that the petitioner had taken all possible steps of extortion, fear in the mind of the complainant to pursue/induce the victim. The case of the petitioner clearly demonstrates that the demand was made by the petitioner to commit extortion. He would refer to the judgment of Hon'ble Madhya Pradesh High Court in the case of **Sudha Tripathi vs. State of Madhya Pradesh (MCRC No 1187 of 2019 and another decided on 2-5-2019** wherein it has been held in paras 6, 7 & 8 which are extracted as under:

“6. Testing the attending factual matrix on the anvil of legal provision and the analysis made (supra), it is seen that charge-sheet reveals that the first two foundational ingredients of extortion i.e. putting the victim/complainant to fear and thereby to induce her/her father to part with property/valuable security are very much alleged. However, the fact remains that the victim and her father who were subjected to fear and inducement did not deliver Rs.20,00,000/- as demanded by the petitioner and other co-accused. Thus, the allegations prima facie reveal satisfaction of the first stage of extortion where all possible steps were taken by petitioner to perpetuate the offence of extortion but the last step of delivery of valuables was not taken by the complainant. This clearly reveals that petitioner had taken all possible steps of instilling fear in the mind of complainant to persuade/induce the victim. This positive overt act of petitioner clearly demonstrate that attempt was made by petitioner to commit extortion.

7. In the conspectus of the discussion supra, this Court is of the considered view that allegation in the charge-sheet spell out prima facie offence

punishable under Sec.385 (attempt to extortion) of [IPC](#) and not Sec.384 of [IPC](#).

8. Consequently, this Court deems it appropriate to exercise its inherent powers to dispose of the present petition in the following terms:-

1. The impugned prosecution against the petitioner alleges an offence punishable u/S.385 (attempt to extortion) of [IPC](#) and therefore, the charge-sheet as impugned herein is sustained but should be treated as alleging offence punishable u/S.385 and not u/S.384 of [IPC](#).

21) From perusal of the aforesaid judgment, it is apparent that the alleged offence under Section 384 of IPC has been quashed on the ground that no valuable assets have been delivered because of extortion, threaten, pressure created by the accused. In the present case also respondent No.5 has not delivered any valuable assets to the petitioner, therefore, the judgment referred to by respondent No.5 also support the contention of the petitioner and in that case also Madhya Pradesh High Court held that offence under Section 384 of IPC is not made out. Therefore, the judgments cited by learned counsel for respondent No.5 are distinguishable from the facts of the present case.

22) From bare perusal of the FIR it can be very visualized that if we take the face value of the allegation made in the complaint, then also it can be very well seen that no offence under Section 388 of IPC is made out as respondent No.5 in his complaint has nowhere stated that on the basis of extortion made by the petitioner, respondent No.5 was put in fear of an accusation by the petitioner or he committed or attempted to commit any offence punishable with death and has delivered any valuable assets to the petitioner. When prima facie provisions of Section 383 of IPC is not made out, then the offence under Section 388 of IPC cannot be made out, because unless and until the ingredient of extortion is established, then only the alleged offence, prima facie, is said to have been committed by the petitioner. Since the ingredients of Sections 383 of IPC are not made out, the ingredient of Section 388 of IPC cannot be, prima facie, established, therefore, registration of FIR, prima facie, is nothing, but an abuse of process of law.

23) The learned counsel for the respondent No. 5 has referred the

judgment to prima facie establish that the petitioner has made an attempt for extortion, or committed an offence, but this judgments are not applicable to the facts of the present case as Chapter 17 deals with offence against the property is itself a complete Chapter and Section 383 defines extortion whereas the judgment cited by the learned counsel for the respondent deals with Section 511 and offence related to cheating, therefore, they are distinguishable from the facts and preposition of law also.

24) Hon'ble the Supreme Court in **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & others, reported in AIR 2021 SC 1918** has considered the power of High Court under Article 226 of the Constitution of India for quashing of the FIR in exercise of power under Section 482 of Cr.P.C., or under Article 226 of the Constitution of India and has held in para 10(iii) which is extracted as under

“10 (iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;”

25) Similarly, Hon'ble the Supreme Court in **Kartar Singh Vs. State of Punjab** reported in **(1994) 3 SCC 569**, has held as under.

“ The power given to High Court under Article 226 is an extraordinary power not only to correct the manifest error but also to exercise it for sake of justice. Under the scheme of the Constitution a High Court is the highest court for purposes of exercising civil, appellate, criminal or even constitutional jurisdiction so far that State is concerned. The jurisdiction possessed by it before coming into force of the Constitution was preserved by Article 225 and by Articles 226 and 227 an extraordinary jurisdiction was conferred on it to ensure that the subordinate authorities act not only in accordance with law but they also function within the framework of law. That jurisdiction of the High Court has not been taken away and in fact could not be taken away by legislation. In England even in absence of Constitution whenever an attempt was made by Parliament to provide that the order was final and no writ of certiorari would lie the High Court always struck down the provision. Since the High Court under the Constitution is a forum for enforcement of fundamental right of a

citizen it cannot be denied the power to entertain a petition by a citizen claiming that the State machinery was abusing its power and was acting in violation of the constitutional guarantee. Rather it has a constitutional duty and responsibility to ensure that the State machinery was acting fairly and not on extraneous considerations. In [State of Maharashtra Vs. Abdul Hamid Haji Mohammed](#), this Court after examining the principle laid down in [Kharak Singh Vs. The State of U.P. and Others](#), and [Paras Ram Vs. State of Haryana](#), held that the High Court has jurisdiction to entertain a petition under Article 226 in extreme cases. What are such extreme cases cannot be put in a strait-jacket. But the few on which there can be hardly any dispute are if the High Court is of opinion that the proceedings under TADA were an abuse of process of court or taken for extraneous considerations or there was no material on record that a case under TADA was made out. If it be so then there is no reason why should the High Court not exercise its jurisdiction and grant bail to the accused in those cases where one or the other exceptional ground is made out”

26) From bare perusal of FIR it is crystal clear that no case of extortion is made out, therefore, offence under Sections 384 and 388 of IPC against the petitioner is not made out. The proceeding initiated by the complainant is nothing, but an abuse of process of law and on this count alone this court is quashing the FIR, therefore, no other ground is required to be dealt by this court.

27) In view of above legal provisions, considering the facts of the case and from perusal of FIR, *prima facie*, no case is made out against the petitioner and criminal proceedings is manifestly attended against the petitioner with malafide, therefore, initiation of criminal proceeding is nothing, but an abuse of process of law.. Considering overall the facts and circumstances of the case, I am of the view that the petitioner has made out strong case for quashing of FIR. Accordingly, FIR No. 106 of 2015 registered at Police Station - Dhamtari on 9-10-2015 for alleged offence said to have been committed under Section 384 and 388 of IPC is quashed. Consequently, the criminal proceeding pending before the Judicial Magistrate First Class, Dhamtari is also quashed.

28) Accordingly, the instant petition is allowed. No order as to costs.

29) A copy of this order be sent to learned Judicial Magistrate First Class, for closure of the proceedings.

Sd/-

**(Narendra Kumar Vyas)
Judge**

Raju