

IPC, S. 383 - Not only putting a person under fear of any injury and dishonestly inducing the person so put in fear to deliver the property but also actual delivery of property are a *sine-qua-non* of the offence of extortion, as defined under Section 383 IPC -

IPC, S. 120A - Criminal agreement can be ascertained from surrounding facts and circumstances, as such agreement need not always be express and can, most of the times, be tacit.

IPC, Section 506 - Telephonic threats made/received when complainant was out of India - No Jurisdiction in India

- For the offence of extortion under Section 383 IPC to be made out, it is not only necessary that the person must be put in fear of injury or grievous hurt, but also dishonestly inducing the person so put in fear to deliver property or valuable security is equally necessary.
- Actual delivery of property is also a sine-qua-non of the offence of extortion, as defined under Section 383 IPC.
- No offence of extortion, punishable under Section 387 IPC, read with Section 383 IPC, is prima facie made out against any of the applicants.
- Pressurizing someone to give up their demand for repayment of money is not extortion as per Section 383 IPC.
- An FIR must mention basic facts from which an inference can be drawn about the commission of a cognizable offence.
- If the core features of an offence are not stated in the FIR, it would not be a first information report relating to the commission of a cognizable offence, as contemplated under Section 154 of the Code of 1973, and no investigation can be initiated by the police upon such information.
- For an offence of criminal conspiracy, the requirement is that of an agreement between two or more persons for doing or causing to be done an illegal act or an act, which is not illegal, by illegal means.
- The complainant has nowhere alleged that there was any agreement for issuing threats or death threats to the complainant between the person who was calling him and the two applicants.
- Even the call details do not reveal any circumstances indicating, prima facie, the presence of such conspiracy.
- Pressurizing someone into giving up their demand for repayment of money is out of the scope of extortion as defined under Section 383 IPC.
- The FIR, taken at its face value, does not disclose that the threats issued were for compelling the complainant to deliver property and that there was indeed delivery of property or valuable security because of those threats.
- Telephonic threats made/received when the complainant was out of India do not disclose any cognizable and non-bailable offence punishable under Section 506 IPC in Greater Mumbai.
- There was one more threat call received when the complainant was in India, but there

is no allegation made against either of the applicants nor is there any allegation to the effect that this threat was issued at the bidding of the applicants.

- The offence of criminal intimidation punishable under Section 506 IPC, as disclosed in the FIR, is prima facie non-cognizable and bailable, and, therefore, on the basis of such an offence, no criminal law could have been set in motion without permission of the Magistrate.
- **(2023-2)210 PLRIJ 027 : ; 2023 PLRonline 0104**
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(2023-2)210 PLRIJ 027 (Bom.) (SN)

HIGH COURT OF JUDICATURE AT BOMBAY

Before: Justice Sunil B. Shukre and Justice M.M. Sathaye.

HEMANT DHIRAJLAL BANKER – Applicant,

versus

STATE OF MAHARASHTRA and another – Respondents.

Criminal Application No.488 Of 2020 Along With Criminal Writ Petition No.1296 of 2023

(i) Penal Code, 1860 (XIV of 1860), S. 383 – Not only putting a person under fear of any injury and dishonestly inducing the person so put in fear to deliver the property but also actual delivery of property are a *sine-qua-non* of the offence of extortion, as defined under Section 383 IPC – Not only putting a person in fear of death or grievous hurt is necessary for prima facie constituting the offence of extortion, but also dishonestly inducing the person so put in fear to deliver property or valuable security is equally necessary – Similarly, delivery of property is yet another ingredient which completes the offence of extortion, as defined under Section 383 IPC, no offence whatsoever of extortion, punishable under Section 387 IPC, read with Section 383 IPC, is prima facie made out against any of the applicants. [Para 18, 23]

In the FIR, we find that there is not a single allegation made against either of these applicants that they or any one of them intentionally put the complainant or any other person in fear of death or of grievous hurt and thereby dishonestly induced the complainant or any other person to make investment in the business of the complainant in January, 2018. Submitting forged documents to Bar Dubai Branch of Bank of Baroda and using these documents for fraudulent withdrawal of amount of Rs.35 crores from the account of the complainant also does not show that the essential ingredients of the offence of extortion are fulfilled. This allegation pertains to fraudulent withdrawal of Rs.35 crores from the bank account of the complainant by using forged documents and it is not about withdrawal of the

amount by obtaining signature of the complainant on withdrawal slip or any cheque leaf by putting the complainant in fear of death or grievous hurt. In the telephonic threat, no attempt was made to coerce the complainant into delivering to any person any property or valuable security. None of the calls was of such nature as to induce, much less dishonestly, complainant to deliver any person any property or valuable security. All of these calls were either about complainant refraining from demanding repayment of money or giving of time of six months for repayment of money.

Isaac Isanga Musumba v. State of Maharashtra and Ors, (2014) 15 SCC 357, the Apex Court has held that, unless property is delivered to the accused person pursuant to the threat, no offence of extortion is made out and the FIR for the offence under Section 384 cannot be registered by the police. Relevant observations of the Apex Court, appearing in paragraph 3 of the judgment, are reproduced thus :-

“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 and 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.”

M/s. GIC Housing Finance Ltd. v. The State of Maharashtra, 2015 SCC OnLine Bom 6231, held that, the essential ingredients of the offence of extortion are intentionally putting any person in fear of any injury to that person or to any other and thereby dishonestly inducing the person so put in fear to deliver to any person any property or any valuable security.

Bhagwan Gajanan Phandat v. State of Maharashtra, 2019 SCC OnLine Bom 144, while dealing with the offence punishable under Section 387 of the IPC, observed that the section does not say that the threatened person has delivered any property in pursuance to the threat. This observation, in our considered view, cannot be understood as laying down an authoritative proposition of law that even without any delivery of property, offence of extortion can be constituted; the reason being that the statement does not make it clear as to whether or not delivery of any property following the threat given is an essential part of the offence of Section 387. The statement is only about the threatened person delivering any property. Secondly, it has been made in ignorance of the law laid down by the Apex Court in the aforesaid cases of *Isaac Isanga Musumba*, *Dhananjay alias Dhananjay Kumar Singh* and *R.S. Nayak (Supra)*.

(ii) Criminal Procedure Code, 1974 (II of 1974) S. 154 - FIR - Must mention basic facts from which an inference can be drawn about commission of a cognizable offence - If the core features of an offence are not stated in the FIR, we would say, it would not be a first information report relating to commission of a cognizable offence, as contemplated under Section 154 of the Code of 1973 and that would mean that no investigation can be initiated by the police upon such

an information.

[Para 23]

It is true that FIR is not an encyclopedia of all facts pertaining to crime (*Farman Imran Shah @ Karu v. State of Maharashtra*, 2014 ALL MR (Cri) 1571) but, FIR being the first information given to a police station about commission of cognizable offence, which sets the criminal law in motion on the premise that a cognizable offence is prima facie committed, it is necessary that the FIR mentions basic facts from which an inference can be drawn about commission of a cognizable offence. In the case of *State of Andhra Pradesh v. Goloconda Linga Swamy*, 2004 AIR (SC) 3967, the Supreme Court has held, in paragraph 12 of the judgment, that though the FIR is not meant to be an encyclopedia of the background scenario, yet it must state skeletal features, thereby disclosing the commission of an offence.

[Para 23]

Held, In the instant case, the FIR, taken at its face value, accepting all the allegations made therein as true, does not disclose that the threats issued were for compelling the complainant to deliver property and that there was indeed delivery of property or valuable security because of those threats. These ingredients are part of the skeletal features of the offence of extortion and as they are missing here, we find that no offence of extortion, as punishable under Section 387 IPC, which is registered against both the applicants in both the crimes, is prima facie made out. There is also no other material from which we could say that these ingredients are present in both the crimes, thereby prima facie constituting offence of extortion as tried to be made out against both the applicants. This would enable us to hold that insofar as offence of extortion as punishable under Section 387 IPC is concerned, both the applicants have made out their case for quashing of the same.

[Para 24]

(iii) Penal Code, 1860 (XIV of 1860), S. 120A - For an offence of criminal conspiracy, as defined under Section 120A IPC, the requirement is that of agreement between two or more persons for doing or causing to be done an illegal act or an act, which is not illegal, by illegal means - In the allegations made in the FIR, complainant has nowhere alleged that there was any agreement for issuing threats or death threats to complainant between the person who was calling him and the two applicants - This is, however, not to say that criminal agreement cannot be ascertained from surrounding facts and circumstances, as such agreement need not always be express and can, most of the times, be tacit.

[Para 25]

Held, In the instant case, there is no other material brought to our notice from which any inference about prima facie existence of criminal agreement can be drawn. Even the call details do not reveal any circumstances indicating, prima facie, presence of such conspiracy. At one place, the complainant states that the fact of his returning to Dubai from Mauritius was known to Vijay Shetty, that Vijay Shetty was in touch with Rupin Banker and Hemant Banker and then he says that "at his behest", without clarifying as to who amongst son and father duo, Vijay Shetty had threatened him. But, as stated earlier, this threat was not for what is understood as the offence of extortion but for pressurizing complainant into

giving up his demand for repayment of money, which was out of the scope of offence of extortion, as defined under Section 383 IPC.

Further, The allegation of criminal conspiracy, in the present case, is primarily in the context of offence of extortion and that very offence having not been prima facie constituted in the present case, in our considered view, even the offence of criminal conspiracy, punishable under Section 120B IPC, cannot be said to be prima facie made out against any of these applicants.

(iv) Penal Code, 1860 (XIV of 1860), Section 506 - Telephonic threats made/received when complainant was out of India - Telephonic threats made on three occasions were outside the soil of India when the complainant was abroad, and, therefore, these threats did not disclose any cognizable and non-bailable offence punishable under Section 506 IPC in Greater Mumbai - There was one more threat call received when he was in India - Although complainant in his FIR does not state anything about the particular place where he was at the time he received the threat, assuming that the threat was received by him when he was within the territorial limits of Greater Mumbai, but, about this particular threat, there is no allegation whatsoever made against either of these applicants nor is there any allegation to the effect that this threat was issued at the bidding of the applicants - Thus, we are of the view that the offence of criminal intimidation punishable under Section 506 IPC, as disclosed in the FIR, is prima facie non-cognizable and bailable and, therefore, on the basis of such an offence, no criminal law could have been set in motion without permission of the Magistrate. [Para 28]

(v) Maharashtra Control of Organized Crime Act, 1999, Sections 3(1)(ii), 3(2) and 3(4) - These sections prescribe punishment for organized crime - Organized crime has been defined under Section 2(e) of the MCOC Act as meaning any continuing unlawful activity by an individual, singly or jointly, either as a member of the organized crime syndicate or on behalf of such syndicate, by taking recourse to violence or threat of violence or intimidation or coercion or other unlawful means, with the objective of gaining pecuniary benefits or some undue economic or other advantage. Registration of a crime against a person or an offender is not what matters but recording of offence of organized crime is what matters as it is a crime which is primarily made up of continuing unlawful activity by an individual, singly or jointly, either as a member of organized crime syndicate or on behalf of such syndicate.

(Kavitha Lankesh v. State of Karnataka, AIR 2021 SC 5113)- Without there being any "continuing unlawful activity", as defined in Section 2(1)(d) of the MCOC Act, there would not constitute any offence of organized crime - Even if there is any continuing unlawful activity, it must be shown to be disclosing a cognizable offence punishable with imprisonment of three years or more, it must have been undertaken singly or jointly; it must have been undertaken as a member of organized crime syndicate or on behalf of such syndicate and it must have been the one in respect of which more than one charge sheet

have been filed before a competent court within the preceding period of ten years, and that court must have taken cognizance of the offence (*Govind Sakharam Ubhe Vs. State of Maharashtra*, 2009 ALL MR (Cri) 1903, *Mujahid Ibrahim Pathan & Ors. Vs. State of Maharashtra & Ors.* 2015 (3) Bom.C.R. (Cri) 704 *Vikrant Harish Varandani Vs. State of Maharashtra & Ors. (Criminal Writ Petition No.2560 of 2019, decided on 29th April 2021.)* -

Such being the requirements of the offence of organized crime, we have to see as to whether or not there is any continuing activity which is prohibited in law and which is a cognizable offence punishable with imprisonment of three years or more, which is attributable to both the applicants or either of the applicants either directly or as member of an organized crime syndicate. The answer to this poser has to be given as in the negative as we have already found that there is no activity attributable to both or any of the applicants, which is a cognizable offence. This has a reference to what we have found in respect of the offence of criminal intimidation punishable under Section 506 IPC registered against the applicants and also to offence of extortion punishable under Section 387 IPC or of criminal conspiracy punishable under Section 120B IPC, which offences have been found by us as not having been prima facie made out against any of these applicants. We have already made a detailed discussion in this regard in the earlier paragraphs. If there is no continuing unlawful activity, as defined under Section 2(1)(d) of the MCOC Act, prima facie committed either individually or jointly and either as a member of an organized crime syndicate or on behalf of such syndicate by any of these applicants, there cannot be made out any offence of organized crime under Section 3 of the MCOC Act. That apart, there is also no material showing that these applicants or any of them had any nexus in the context of the offences of extortion, criminal conspiracy and criminal intimidation, with Vijay Shetty against whom more than one charge sheet have been filed. Presence of such nexus is necessary as held in the case of *Kavitha Lankesh v. State of Karnataka*. This would mean that registration of this crime against the applicants is without any substance and, therefore, all the sections applied against both the applicants in this regard would have to be quashed and set aside. Once it is found that neither the offence punishable under Section 387 IPC nor the offence punishable under Section 120B IPC nor the offence punishable under Section 506 IPC, read with Section 34 IPC, is prima facie made out against both the applicants, the impugned order dated 22nd September 2021 passed by the Joint Commissioner of Police (Crime), Mumbai, which has made these offences as its basis, cannot be sustained in the eye of law. [Para 31, 32, 33]

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