(2023-2)210 PLRIJ 027 (Bom.) ; 2023 PLRonline 0104 (Bom.)

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
(Date of Reserving the Judgment : 27th April, 2023. Date of Pronouncing the Judgment : 22nd June, 2023.)

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 - 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, along with connected matter' 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 aforestated cases of *Isaac Isanga Musumba, Dhananjay alias Dhananjay Kumar Singh* and *R.S. Nayak (Supra)*.

CrPC 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]

IPC, 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.

IPC, 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]

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 Vs. State of Karnataka, AIR 2021 SC 5113)- W*ithout 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 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 it's basis, cannot be sustained in the eye of law.[Para 31, 32, 33]

Mr. Aabad Ponda, Sr. Advocate, with Mr. Parvez Memon, Mr. Zulfiquar Memon, Mr. Waseem Pangarkar, Mr. Ravi Mishra, Ms. Drishti Singh, Mr. Siddhant Dhavale and Mr. Mahesh Ahire, i/by MZM Legal, for the Applicant in APL/488/2020 & IA/1252/2023 and for the Petitioner in WP/1296/2023.Ms. A.S. Pai, P.P., with Ms. M.H. Mhatre, APP, for RespondentNo.1-State. Mr. Nitin Gaware-Patil for Respondent No.2-Original Complainant.

JUDGMENT :

(Per Sunil B. Shukre, J.) - Heard Mr. Ponda, learned Senior Advocate for the applicant-Hemant Banker and the petitioner-Meenakshi Banker, Ms. Pai, learned Public Prosecutor for the respondent no.1-State and Mr. Gaware-Patil for respondent no.2-original complainant.

1. For the sake of convenience, the applicant - Hemant Banker and the petitioner - Meenakshi Banker are hereinafter called as **"the applicants"** and

Criminal Application No.488 of 2020 and Criminal Writ Petition No.1296 of 2023 are hereinafter referred to as **"the applications"**.

2. By these applications, the applicant – Hemant Banker, accused no.4 in Crime No.303 of 2020 registered at Worli Police Station, Mumbai and accused no.2 in FIR No.122 of 2020 registered by Anti-Extortion Cell, D.C.B., C.I.D., Mumbai, and other applicant – Meenakshi Banker, accused no.3 in Crime No.303 of 2020 registered at Worli Police Station, Mumbai and Wanted Accused in Crime No.122 of 2020 registered by the Anti- Extortion Cell, D.C.B., C.I.D., Mumbai, have sought quashing of both the FIRs and also quashing of the order dated 22nd September 2021 of the Joint Commissioner of Police (Crime), Mumbai granting approval under Section 23(1)(a) of the Maharashtra Control of Organized Crime Act, 1999 *(for short, "**MCOC Act**")*, to initiate proceedings under the MCOC Act against the applicants and other accused persons.

3. It all began with filing of a complaint with Worli Police Station on 27th August 2020 by respondent no.2-Kailash Aggarwal. The respondent no.2 alleged that, through a common acquaintance, one Akash Mehta, he was introduced to Rupin Banker (Accused No.2 in Crime No.303 of 2020 and Wanted Accused in FIR No.122/2020) and family of Rupin Banker in the year 2018. He alleged that he extended some financial assistance to Rupin Banker. He further alleged that Rupin Banker and his wife - Meenakshi submitted forged documents at Bar Dubai Branch of Bank of

Baroda and fraudulently withdrew Rs.35 crores from the account of respondent no.2, in respect of which respondent no.2 has filed a complaint against Rupin Banker, Meenakshi Banker and Hemant Banker at Police Station, Dubai. The applicant further alleged that, during that period of time, Rupin Banker and Meenakshi Banker ran away to London, while this applicant continued to stay in Dubai. The respondent no.2 further alleged that on 15th July 2019, he was in Mauritius and on the next day, i.e. 16th July 2019 at 5:30 p.m. Mauritius time, he received on his mobile phone a call from international number "+8244" and the caller disclosed his name as "Vijay". The respondent no.2 further alleged that since he was busy in a meeting, he told the caller to call him back after some time and thereafter again, call from the same number was received by respondent no.2 on his mobile number and at that time, the caller told him that he was Vijay Shetty, a notorious goon, who had committed six murders, including one at Kala Ghoda, Mumbai. The applicant further alleged that the caller asked respondent no.2 to not take any police action against Rupin Banker.

4. The respondent no.2 then stated that he returned to Dubai on 20th July 2019 and while at Dubai, he received call on his mobile number from the same international number on 22nd July 2019. The respondent no.2 further alleged that he recognized the voice of the caller and thought it to be of Vijay Shetty. This time, respondent no.2 has alleged, the caller hurled abuses at him and threatened him to not demand money from Banker family or otherwise, he would have to lose his life. Respondent no.2 stated that the

caller knew that he had returned to Dubai from Mauritius and that the caller was in touch with Rupin Banker and his father Hemant Banker and that the caller had issued threat to him at the behest of one of them. Respondent no.2 further alleged that about two days thereafter, he received another call from the same international number and at that time, Vijay Shetty started threatening him on behalf of Rupin Banker, but, as he was scared, he did not utter a single word and cut short the call. He alleged that thereafter, he tried contacting Hemant Banker – the father of Rupin Banker, but to no avail. Respondent no.2 has further alleged that feeling terrorized due to the threat calls being received by him, he returned to India on 27 th July 2019 and then on 8th August 2019, when he was at home, he received on his mobile phone a call from Hemant Banker. He stated that Hemant Banker told him that some more time would be required for returning the money. He further alleged that when he asked Hemant Banker as to why did he make Vijay Shetty call him giving threats to him, he answered in the negative.

5. The respondent no.2 then alleged that on 10th August 2019 again, Vijay Shetty called him and asked him to not demand any money from Rupin Banker and that Rupin Banker be given six months' time for repayment. He further alleged that again on 22nd August 2019, Vijay Shetty called him in the afternoon and issued threats to him. On the basis of these allegations, Worli Police Station registered an offence of extortion, punishable under Section 387, r/w. Section 34 of the IPC, vide FIR / Crime

No.303/2020 against Vijay Shetty, Rupin Banker, Meenakshi Banker and Hemant Banker and started investigation. The Anti-Extortion Cell, Crime Branch, Mumbai also made its own investigation while registering Crime No.122/2020 under Sections 387 and 120(B), r/w. Section 34 of the IPC, based on the same complaint filed at Worli Police Station. During the course of the investigation, it found that there was material available for proceeding under the provisions of the MCOC Act against the accused persons. Accordingly, it sought approval of the competent authority under Section 23(1)(a) of the MCOC Act for registration of MCOC offences and investigating them in accordance with the law. The competent authority, the Joint Commissioner of Police (Crime), Mumbai, granted approval under Section 23(1)(a) of the MCOC Act on 22nd September 2021 against these applicants and other accused persons.

6. On the basis of the approval so granted, offences punishable under Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act, 1999 came to be added and have also been registered in FIR No.122 of 2020 registered against these applicants and other accused persons. The applicants have sought quashing of these FIRs and approval order impugned by these applicants.

7. Mr. Aabad Ponda, learned Senior Advocate for the applicant submits that the basic offence registered against the applicant in the present case is the one under Section 387 of the IPC and it is this offence which, in the opinion of the prosecution, constitutes continuing unlawful activity

undertaken by the applicants and others as members of organized crime syndicate for obtaining pecuniary benefits, thereby justifying registration of offences punishable under Sections Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act. But, he submits, the basic offence of extortion, as defined under Section 383 of the IPC, is not at all constituted against the present applicants. Mr. Ponda submits that there is neither any allegation of these applicants issuing any threat of injury or death against the respondent no.2 nor is there any allegation about the applicants dishonestly inducing the person so put in fear of injury or death to deliver to any person any property or valuable security. He further submits that there is no material whatsoever collected during the course of investigation which would fulfill the essential ingredients of the offence of extortion, as defined under Section 383 of IPC. He further submits that all the allegations taken as uncontroverted and accepted as they are do not even give a hint of making out the offence of extortion as defined under Section 383 of IPC against the applicants. He also submits that there is no material available on record showing prima facie commission of offences of criminal conspiracy and criminal intimidation in Mumbai. He further submits that when the material available on record, taken as true and at its face value, does not show prima facie commission of any of the said offences, there cannot be found, in any manner, indulging in any continuing unlawful activity within the meaning of Section 2(1)(d) of the MCOC Act by these applicants and so there cannot be any organized crime committed by these applicants within the meaning of Section 2(1)(e)

of the MCOC Act, which is punishable under Section 3 of the MCOC Act. He thus submits that both the FIRs registered against these applicants and the impugned approval order passed by the Joint Commissioner (Crime), Mumbai deserve to be quashed and set aside.

8. Ms. Pai, learned P.P. appearing on behalf of the State has strongly opposed the application. She submits that it is well settled law that FIR is not an encyclopedia of the crime committed and, therefore, if something is missing from the FIR, it could not be said that no offence is prima facie made out against the person against whom the FIR is registered. She submits that during the course of the further investigation made by the Anti-Extortion Cell, Crime Branch, Mumbai, more evidence has been disclosed against the applicants and that evidence includes the calls recorded between various accused persons and between accused persons and the applicants. She further submits that there are specific allegations made against Vijay Shetty, who is a gangster and against whom more than one charge sheet involving cognizable offences punishable with imprisonment of three years or more have been filed within the preceding period of ten years and since some connection between Banker family and Vijay Shetty has been prima facie found, all the offences, which are registered against these applicants and other accused persons, are prima facie made out. She further submits that the FIRs disclose that the offences as registered against the applicants and others have also been committed in India and they had international ramifications as the threats were received by respondent no.2-complainant

at Mauritius and Dubai as well. Ms. Pai further submits that these offences have been committed with a view to gain pecuniary benefits. She further submits that so far, charge sheet could not be filed against Vijay Shetty as he is still absconding, but, as held in the case of *Kavitha Lankesh Vs. State of Karnataka and Ors.*[1], it cannot be said that cognizance of the charge sheet filed against the accused who are present before the court cannot be taken in the absence of absconding accused as the cognizance is to be taken of the offence and not of the offender. She also submits that Hemant Banker is the main accused as it was him who had introduced Vijay Shetty to the respondent no.2. Thus, she submits that this is not a fit case for quashing of the FIRs and order impugned herein.

9. Mr. Gaware Patil, learned counsel for respondent no.2-complainant has made his submissions on similar lines as Ms. Pai, learned P.P. In addition, he has invited our attention to Section 22 of the MCOC Act, which raises a presumption against the accused regarding commission of offence of organized crime, unless the contrary is proved. He submits that in this case, there is sufficient material available on record, which, prima facie, indicates commission of offence. He also submits that Hemant Banker is the kingpin of the organized crime syndicate and it was him who had sought the help of Vijay Shetty in committing the offence of extortion. He further submits that two of the accused persons, Rupin Banker and Meenakshi Banker, were tried by a criminal court in UAE and were convicted for forgery under its laws.

1 *2021 SCC OnLine SC 956*

He further submits that even though Meenakshi Banker has been shown to be housewife, she, in fact, has been made Director in several companies and has played active role in commission of the offences. He submits that roles played individually by the members of the organized crime syndicate cannot be viewed in an isolated manner and made a basis for quashing of the crime registered against the accused persons. He submits that these applicants are making every effort to flee away from India and to make themselves unavailable for the trial. On these grounds, he has opposed the applications.

10. Accused no.4-Hemant Banker in FIR No.303/2020, who is applicant in the Criminal Application No.488 of 2020, had earlier by this very application sought similar reliefs. This Court, by its judgment dated 14th December 2021, had dismissed the application. The said judgment was challenged by Hemant Banker before the Apex Court in Criminal Appeal No.791 of 2023. The Supreme Court, however, set aside the said judgment and remanded the matter back to the High Court for a fresh consideration on its own merits. The Supreme Court found it necessary to consider the submissions of the applicant – Hemant Banker, which related to prima facie making out of offences punishable under Sections 387 and 506 of the IPC or otherwise. The Supreme Court held that this Court did not bestow serious consideration with regard to the one based on Section 387 of the IPC. It further held that insofar as offence punishable under Section 506 of IPC was concerned, though the question whether it was committed or not was something that could have been gone into only by the trial court, but what

would matter for the purpose of the application filed under Section 482 of Cr.P.C. is as to whether or not the allegations would prima facie attract that offence in the light of the notification dated 4th October 1962.

11. Now, if we take a look at the impugned order passed under Section 23(1)(a) of the MCOC Act dated 22nd September 2021, we would find that the offences punishable under Sections 387 and 120(B), read with Section 34 of IPC, registered against the applicants, weighed with the authority while granting its approval for proceeding against these applicants under the provisions of MCOC Act. The fact of registration of FIR against the applicant – Hemant Banker for an offence punishable under Section 387 having been taken into account by the authority granting approval under Section 23(1)(a) of the MCOC Act was noted by the Apex Court and, therefore, it observed that it was necessary to bestow serious consideration in regard to the one based on Section 387 of IPC. This background of facts would make it necessary for us to consider first as to whether or not the allegations as made and the material as available, taken at face value without adding anything to the same and without subtracting anything from the same, are sufficient to constitute the offence punishable under Section 387 of IPC and also offence punishable under Section 120(B) of IPC against the applicants. This is the principle of law which governs exercise of power of this court under Section 482 of the Code of Criminal Procedure. This principle of law is now well embedded in our criminal jurisprudence. A useful reference in this regard may be made to the cases of *R.P. Kapur Vs.*

State of Punjab[1], *State of Punjab Vs. Kasturi Lal & Ors.*[2], *Padal Venkata Rama Reddy Vs. Kovvuri Satyanarayana Reddy & Ors.*[3], *Subrata Das Vs. State of Jharkhand*[4] and *State of Haryana Vs. Bhajan Lal*[5].

12. Before we deal with the allegations made against this applicant and the other applicant – Meenakshi Banker, as regards offence of extortion punishable under Section 387 of IPC, it would be appropriate for us to consider the law relating to the extortion, as it would help us in determining as to whether or not the allegations made against both the applicants prima facie constitute the offence of extortion.

13. The section applied against both the applicants is Section 387 of the IPC, which prescribes punishment for the offence of extortion in its aggravated form. It says that, whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other person, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. The term "Extortion" is defined in Section 383 and it reads thus :-

> *"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*

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1 *AIR 1960 SC 866*
2 *(2004) 12 SCC 195*
3 *(2011) 12 SCC 437*
4 *(2010) 10 SCC 798*
5 *1992 Supp. (1) SCC 335*

deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

14. This definition indicates following ingredients of the offence of extortion, which must be present for constituting it.

(i) Intentionally putting any person in fear of injury to that person or any other person;
(ii) Inducing of the person so put in fear dishonestly;
(iii) Delivery to any person any property or valuable security by the person put in fear and subjected to dishonest inducement.

If any of these ingredients is absent, the offence of extortion would not be complete, as held in the case of *Dhananjay alias Dhananjay Kumar Singh Vs. State of Bihar and Anr.*[1]. In an earlier case of *R.S. Nayak Vs. A.R. Antulay and Anr.*[2], similar view was taken by the Apex Court.

15. In the case of *Isaac Isanga Musumba and Ors. Vs. State of Maharashtra and Ors.*[3], 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 :-

1 *(2007) 14 SCC 768*
2 *(1986) 2 SCC 716*
3 *(2014) 15 SCC 357*

> *"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."*

16. In the case of *M/s. GIC Housing Finance Ltd. Vs. The State of Maharashtra and Anr.*[1], a Coordinate Bench of this court has taken a similar view when it 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.

17. Of course, in the case of *Bhagwan Gajanan Phandat Vs. State of Maharashtra, along with connected matter*[2], a Coordinate Bench of this court, of which one of us was a part, has, while dealing with the offence

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1 *2015 SCC OnLine Bom 6231*

2 *2019 SCC OnLine Bom 144*

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 aforestated cases of *Isaac Isanga Musumba, Dhananjay alias Dhananjay Kumar Singh* and *R.S. Nayak (Supra)*. So, it is clear now that 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. With this clarity in mind, let us now proceed to consider the allegations made against both the applicants.

18. Now, in the light of the above referred law, let us consider the nature of the allegations made against both the applicants and find out as to whether or not they, taken at their face value, satisfy the requirements of the offence of extortion and constitute an offence punishable under Section 387 of IPC registered against both the applicants in these crimes.

19. In both the crimes, the FIR No.303 of 2020 dated 27th August 2020 is at the center and is what has set the criminal law in motion and, therefore, consideration of the allegations made in this FIR would be of utmost importance. On a careful perusal of 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. We further find that the other allegation, which is about Rupin Banker and Meenakshi Banker 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. As regards such fraudulent withdrawal, it is not in dispute that criminal court at Dubai has already found Rupin Banker and Meenakshi Banker guilty and imposed appropriate punishment as per the law prevailing in that country.

20. In addition to above referred allegations, there are a few more allegations made in the FIR filed against these applicants and other persons.

These allegations relate to issuance of threats to the respondent no.2 by one Vijay Shetty and that is stated to have been done on behalf of Rupin Banker. The first such threat, as has been alleged, is on the life of respondent no.2, which was issued in the evening of 16th July 2019 and it was issued by making a call from international number +8244 to the mobile number of respondent no.2 - 9820297745. This threat was received by respondent no.2 admittedly when he was in Mauritius. The caller, Vijay Shetty, had then called upon respondent no.2 to not initiate any police action against Rupin Banker or otherwise respondent no.2 would be killed on his reaching Mumbai. By this threat, no attempt was made to coerce the respondent no.2 into delivering to any person any property or valuable security. The next threat was received by respondent no.2 again from Vijay Shetty on 22nd July 2019 and it was received by him when he was in Dubai. At that time, it is alleged, the caller abused respondent no.2 and threatened him that if he demanded any money from Banker family, he would have to pay for his life. It is also alleged that this threat was thought by respondent no.2 to have been issued by Vijay Shetty at the behest of Rupin Banker as he believed that the caller was in touch with Rupin Banker and his father Hemant Banker. Here again, the threat given was not for inducing the respondent no.2 to deliver any property, but to refrain from demanding repayment of money.

21. The further allegations made in the FIR No.303 of 2020 show that same caller, Vijay Shetty, again called up respondent no.2 about two days

after 22nd July 2019 and had threatened him but respondent no.2 cut short the call without speaking much to him. Respondent no.2 has then stated that thereafter he returned to India and in the night of 8th August 2019, when he was at home, Hemant Banker, one of the applicants, called him on his mobile no.9820297745 and told him that some time would be required for return of the money. He has further stated that when he asked him as to why did he get Vijay Shetty make a threatening phone call to him, Hemant Banker answered in the negative. Then, respondent no.2 also alleged that in the evening of 10th August 2019, the same caller, Vijay Shetty, made a phone call to him and asked him to not demand repayment of money and that respondent no.2 should give to Rupin Banker six months' time for repayment of money. Similar call was alleged to be received by respondent no.2 from Vijay Shetty on 22nd August 2019.

22. When the above referred allegations regarding the calls made by the Hemant Banker and Vijay Shetty are considered at their face value, without adding anything to them or subtracting anything from them, we would find that none of those calls was of such nature as to induce, much less dishonestly, respondent no.2 to deliver any person any property or valuable security. All of these calls were either about respondent no.2 refraining from demanding repayment of money or giving of time of six months for repayment of money. We have already seen that 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 and as held in the case of *Isaac Isanga Musumba and Ors. Vs. State of Maharashtra and Ors.*[1] It is clear that 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. It is true that FIR is not an encyclopedia of all facts pertaining to crime, as held in the case of *Farman Imran Shah @ Karu Vs. State of Maharashtra*[2], 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 Vs. Goloconda Linga Swamy*[3], 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. 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

1 *(2014) 15 SCC 357*

2 *2014 ALL MR (Cri) 1571*

3 *2004 DGLS (SC) 599; 2004 AIR (SC) 3967*

that no investigation can be initiated by the police upon such an information.

23. 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 respondent no.2 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 brought to our notice 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.

24. The impugned order dated 22nd September 2021, issued under Section 23(1)(a) of the MCOC Act, apart from making the offence punishable under Section 387 IPC as it's basis, also makes the other offence the offence of criminal conspiracy punishable under Section 120B of the IPC. However, 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. Now if we carefully consider the allegations made in the FIR, we would find that the respondent no.2 has nowhere alleged that there was any agreement for issuing threats or death threats to respondent no.2 between Vijay Shetty and these two applicants – Hemant Banker and Meenakshi Banker. 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. But, 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 respondent no.2 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 respondent no.2 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. 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.

25. If we say that for slapping offence of criminal conspiracy against the applicants, offence of criminal intimidation under Section 506 IPC also provided contextual setting, we would have to examine first, if this offence is prima facie made out against the applicants or not.

26. In order to constitute an offence of criminal intimidation, as defined under Section 503 IPC, the threat must have been issued to cause injury to a person or his reputation or his property with an intent to cause alarm to that person or compel that person to do some act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do. If these ingredients are found to be present in the FIR, it would be an offence of criminal intimidation punishable under Section 506 IPC. These ingredients are prima facie present in the present case, but of course not against these applicants, as there is no allegation that these applicants or any of them had actually made threat calls. If that is so, offence of criminal intimidation would not be prima facie made out against the applicants, thereby making the registration of offence of criminal conspiracy in this context without any basis.

27. Apart from what is stated above, we must say that offence punishable under Section 506 IPC is, in the normal circumstances, as per the First Schedule to the Code of Criminal Procedure, 1973, non-cognizable and

bailable and that means no FIR for this offence can be registered in normal course. However, as per the notification dated 4th October 1962 issued by the Government of Maharashtra, this offence is made cognizable and non-bailable when committed in Greater Mumbai. Applicability of this notification to the First Schedule to the Code of 1973, so as to amend the First Schedule accordingly, was one of the issues which was referred to a Full Bench of this court for its answer. The Full Bench, by its judgment dated 5th April 2017, delivered in Criminal Writ Petition No.2841 of 2013 *(Kahera Sayed Vs. The State of Maharashtra & Ors.), together with other connected matters*, answered the issue in the affirmative. It held that this notification of 4th October 1962 has the effect of amending the First Schedule to the Code of 1973 and this notification is applicable to the area of Greater Mumbai even after the Code of 1973 having come into force upon repeal of the Code of 1898. So, the position is clear. Offence punishable under Section 506 IPC would be cognizable and non-bailable only when it is committed in Greater Mumbai. In the instant case, the allegations contained in the FIR, when accepted as they are, do not show that the offence of criminal intimidation has been prima facie committed by the caller, who was different from the applicants, in Greater Mumbai. They show that the threats made firstly on 16th July 2019 in the evening; secondly on 22nd July 2019 and thereafter about two days from 22nd July 2019, were outside the soil of India 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 made on 10th August 2019, which, according to the respondent no.2, was received by him when he was in India. Although respondent no.2 in his FIR does not state anything about the particular place where he was at the time he received the threat, one can assume 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 these 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. It would then mean that there could have been no offence of criminal conspiracy in the context of offence of criminal intimidation.

28. Learned P.P. has argued that there is some more material available in the nature of some call details of the accused persons. Copies of the transcriptions of these call details have been placed on record. We have gone through them and we find that there is nothing in these call details records so as to incriminate the applicants or any of them in the offences registered against them. Similarly, an argument has also been made that though Meenakshi Banker has been shown to be housewife, she, in fact, has been made Director in several companies and has played active role in

commission of the offences. We must say that the submission about playing of active role by her is without any basis and that the FIR registered against her and other persons does not contain any skeletal features about her playing any active role in commission of the offences, which is a requirement of law, as we have seen earlier. There is no material shown to us about her playing any active role in commission of the offences alleged against her. It then follows that the conclusions that we have reached so far get only further bolstered up.

29. 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 it's basis, cannot be sustained in the eye of law. It would then follow that even the offences punishable under Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act could not be said to have been made out against any of the applicants. 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. Of course, as held in the case of *Kavitha Lankesh Vs. State of Karnataka and Ors.*[1], 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. But, 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[2].

30. 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

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1 *AIR 2021 SC 5113*

2 *(See cases of :*

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.

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 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 Vs. State of Karnataka and Ors.*[1]. This would mean that registration of this

1 *2021 SCC OnLine SC 956*

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. It would also mean that the impugned order of approval passed under Section 23(1)(a) of the MCOC Act by the Joint Commissioner of Police (Crime), Mumbai is illegal and cannot be sustained in the eye of law. However, we clarify here that since quashing of FIR in part is permissible, as held in the case of *Lovely Salhotra & Anr. Vs. State (NCT of Delhi) & Anr.*[1], the final order of quashing of the impugned crimes here would be applicable only to these applicants – Hemant Banker and Meenakshi Banker and it would not affect in any manner investigation being made in both these crimes against the remaining accused persons.

31. There is also an argument made that there is presumption as to an offence under Section 3 of the MCOC Act and this presumption is to be found in Section 22 of the MCOC Act. It is submitted that since the offence of organized crime has been registered against these applicants, this presumption, as provided under Section 22, would go against the applicants. In order to properly understand the nature of the presumption, we find it necessary to reproduce Section 22 of the MCOC Act here and it reads thus:-

> *"22. Presumption as to offences under Section 3*
>
> *(1) In a prosecution for an offence of organized crime punishable under Section 3, if it is proved -*
>
> *(a) that unlawful arms and other material including documents or papers were*

1 *(2018) 12 SCC 391*

recovered from the possession of the accused and there is reason to believe that such unlawful arms and other material including documents or papers were used in the ***commission of such offence;*** *or*

(b) that by the evidence of an expert, the finger prints of the accused were found at the site of the offence or on anything including unlawful arms and other material including documents or papers and vehicle used in connection with the commission of such offence, the Special Court shall presume, unless the contrary is proved, that the accused had committed such offence.

(2) In a prosecution for ***an offence of organized crime*** *punishable under sub-section (2) of section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of, "an offence of organised crime," the Special Court shall presume, unless the contrary is proved, that such person has committed the offence under the said sub-section (2).***"**

32. It would be clear from the provisions contained in clauses (a) and (b) of sub-sections (1) and (2) of Section 22 of the MCOC Act, that there has to be something like **"commission of such offence"** or commission of **"an offence of organized crime"** and without there being any prima facie commission of an offence, as contemplated under these provisions of law, or without there being any material showing prima facie commission of an

offence, as contemplated by these provisions of law, the presumption arising from recovery of unlawful arms or other materials or documents or papers or fingerprints or discovery of evidence about rendering of financial assistance could not be drawn. These provisions of law enable the Special Court to mandatorily presume that the accused has committed an offence of organized crime if it is proved that the documents, other material, unlawful arms, fingerprints etc. recovered from the possession of the accused had reasonable link to the commission of offence. Of course, this presumption is rebuttable at the instance of the accused. But, in the present case, we have found that there is no basis for us to hold that these applicants have or any of them has prima facie indulged in any continuing unlawful activity prohibited by law, as envisaged in Section 2(1)(d) of the MCOC Act, and that being so, presumption under Section 22 of the MCOC Act would not be attracted here.

33. In the result, we find that both the criminal application and writ petition deserve to be allowed. Accordingly, we pass the following order :-

(i) Criminal Application No.488 of 2020 and Writ Petition No.1296 of 2023 are allowed.

(ii) It is directed that the impugned crimes bearing Crime No.303 of 2020 and Crime No.122 of 2022 registered at Worli Police Station, Mumbai and Anti-Extortion

Cell, Crime Branch, Mumbai, respectively, are hereby quashed and set aside.

(iii) The impugned order dated 22nd September 2021 passed under Section 23(1)(a) of the MCOC Act by the Joint Commissioner of Police (Crime), Mumbai is also quashed and set aside.

(iv) Interim Application No.1252 of 2023 is disposed of in terms of the above order.