

**Court No. - 12**

**Case :-** APPLICATION U/S 482 No. - 11678 of 2023

**Applicant :-** Ram Gopal Gupta

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Deptt.  
Lko. And 3 Others

**Counsel for Applicant :-** Riyaz Ahmad, Divesh Sinha, Sunil

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajeev Singh, J.**

1. Counter affidavit filed by learned A.G.A. for the State is taken on record.

2. Learned counsel for the applicant does not want to file any rejoinder affidavit.

3. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

4. The present application has been filed for quashing the impugned charge-sheet dated 13.10.2020 arising out of the F.I.R. No. 432 of 2020 dated 27.09.2020 U/s 384 I.P.C., Police Station- Lonar, District- Hardoi as well as the impugned summoning order dated 25.04.2022 and the impugned order dated 02.08.2023 passed in criminal Case No. 6561/2022 including entire proceedings thereof.

5. On 30.11.2023 following order was passed:-

"1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The present application under Section 482 Cr.P.C. is filed with the prayer to quash the proceedings of Criminal Case No.6561/2022, arising out of Case Crime No.432/2020, under Section 384 I.P.C., Police Station Lonar, District Hardoi.

3. Learned counsel for the applicant has submitted that case in question was initiated on the basis of one aired video but the said video was not made part of the investigation. He also submitted that charge sheet under Section 384 I.P.C. was filed by the Investigating Officer in the most mechanical manner and no offence is made out under Section 384 I.P.C. He next submitted that for proving the said offence it is mandatory that there must be a victim, therefore, indulgence of this Court is necessary.

4. Learned A.G.A. admitted this fact that video was not made part of the case diary and he also does not dispute this fact that there is no victim in the entire case diary.

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5. Considering the submissions of learned counsel for the parties, going through the record of the application as well as other relevant documents, as F.I.R. in question was lodged by the Sub Inspector, Rishi Kumar, P.S. Lonar, Hardoi on the basis of some video but neither the same was made part of the case diary nor sent to the F.S.L. for examination, therefore, matter requires consideration.

6. List this case on 8.12.2023.

7. On the next date, Circle Officer, Police Station Lonar, District Hardoi shall appear before this Court and explain how offence under Section 384 I.P.C. is made out and also file affidavit in this regard, failing which, cost shall be imposed.

8. Till the next date of listing, impugned proceeding shall remain stayed."

6. In pursuance of aforesaid order, Circle Officer- Mr. Vinod Kumar Dubey, Circle Officer, Harpalpur, Hardoi is present today before this Court. He states that during the course of investigation, victim was not traceable, as a result, the statement of informant/sub inspector who prepared the recovery memo was recorded and charge-sheet was submitted by Investigating Officer on the basis of recovery as well as confessional statement of applicant.

7. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case on the basis of presumption that he was extorting the money from truck drivers. He further submits that the F.I.R. of the case in question was lodged by Sub Inspector- Rishi Kapoor, Police Station- Lonar, District- Hardoi with the averment that on 27.09.2020, when he was patrolling along with Constable- Ram Singh in the area of Police Outpost Bawan, he received a video, in which, he found that at No Entry Point, one police personnel was extorting the money from truck drivers and was keeping it in his pocket. On taking cognizance of the said video, Sub Inspector- Rishi Kapoor went at No Entry Point and the alleged video was shown to the person who was deployed at No Entry Point then the said person admitted that the photo in the alleged video was of him but it was old video. In this regard, the name of deployed police personnel was asked and search was also conducted; then it was found that he was Ram Gopal Gupta, s/o late Beche Lal r/o Husainpur Sahora, Post- Sakatpur, Police Station- Lonar, District- Hardoi, who was deployed as home guard at the No Entry Point. After search, total thirty rupees (three notes of ten rupees) were found from his pocket and after interrogation, he admitted that he was taking the money from people those were passing from the No Entry Point; he also stated that all the extorted money has already been spent, and he also told that Rs. 30/- which were recovered from him was brought from his house. Thereafter, statement of Constable-

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Ram Singh and Sub Inspector- Rishi Kapoor was recorded U/s 161 Cr.P.C. and charge-sheet was submitted by Investigating Officer.

8. Further submission of learned counsel for the applicant is that as per the provisions of Section 384 I.P.C., it is necessary that for the purpose of extortion, aggrieved person is a necessary ingredient but in the present case, no one is aggrieved as merely on the basis of presumption, applicant was implicated and charge-sheet was submitted by Investigating Officer U/s 384 I.P.C. It is further submitted that the discharge application was moved by applicant before learned trial court on 02.08.2022 which was rejected without considering the ingredients of provisions of Section 383 I.P.C. Relying on the decision of Hon'ble Apex Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in **1992 SCC (Cri.) 426**, it is, thus, submitted that summoning order dated 25.04.2022 as well as the impugned order dated 02.08.2023 and charge-sheet dated 13.10.2020 may be quashed.

9. Learned A.G.A. opposes the prayer of applicant and submits that after investigation, charge-sheet was submitted by Investigating Officer and all the defense of applicant can be considered at the appropriate stage during the trial. He also concedes the fact that Rs. 30/- were recovered from applicant and he was taken into custody on the basis of presumption. He further submits that during the course of the investigation, applicant had himself admitted that he extorted the money at the No Entry Point. He also submits that there is no illegality in the aforesaid charge-sheet which was bet by Prosecuting Officer and approved by Circle Officer of the area in question. Learned A.G.A. lastly submits that there is no illegality in the summoning order and the order by which the discharge application of applicant was rejected. However, he does not dispute the fact that no aggrieved person was found during the course of investigation.

10. Considering the submissions of learned counsel for the applicant, learned A.G.A. and going through the contents of application, F.I.R., impugned order as well as other relevant enclosures; it is evident that as per the prosecution case, on 27.09.2020, informant- Sub Inspector- Rishi Kapoor received a video on his phone, in which, it was shown that at No Entry Point, one person in police dress was taking money from the truck drivers after putting them under fear and was keeping the money inside his pocket. Sub Inspector- Rishi Kapoor, immediately, went to the No Entry Point and found that he was the same person, as shown in video, who was extorting the money. The alleged video was shown to the said police

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personnel who accepted that the shown photo in the video was of him. Thereafter, search was conducted and total Rs. 30/- were found from his pocket for which he explained that this amount was brought from his house when he was coming to his duty. It is also evident that neither any extorted amount nor any aggrieved person was found, at the time of search or during the course of investigation. Moreover, admittedly no statement of any aggrieved person was recorded.

11. The arrest/recovery memo which was prepared is as under:-

"नकल फर्द गिरफ्तारी एक नफर अभियुक्त अन्तर्गत धारा-384 आई०पी०सी० थाना-लोनार, जनपद-हरदोई आज दिनांक-27.09.2020 को में उ० नि० ऋषि कपूर मय हमराही का० राम सिंह के चौकी क्षेत्र बावन में मामूर था। जब मैं जगदीशपुर चौराहा था तो फोन पर एक वीडियो वायरल हुआ कि नो इन्ट्री प्वाइन्ट पर वर्दी दिखायी दे रहा है जो ट्रको को चालको को डरा धमकाकर पैसे वसूल कर रहा है और अपनी जेब में रख रहा है। उक्त वीडियो का संज्ञान लेकर नो इन्ट्री प्वाइन्ट पर पहुंचा तो वह व्यक्ति नो इन्ट्री प्वाइन्ट पर ज्यूटी कर रहा है। उस व्यक्ति को वीडियो दिखाकर पहचान करायी गयी तो उस व्यक्ति ने कहा कि यह मेरी फोटो हैं। वीडियो पुराना है। नाम पता पूछते हुए जामा तलाशी की गयी तो उसने अपना नाम राम गोपाल गुप्ता पुत्र स्व० बेचे लाल निवासी-हुसैन सहोरा, थाना-लोनार, हरदोई उम्र करीब 55 बताया कि मैं होम गार्ड में तैनात हूँ। मेरा नम्बर-0450 है। वर्तमान में नो इन्ट्री प्वाइन्ट पर ज्यूटी कर रहा हूँ। जामा तलाशी से दाहिने पेन्ट की जेब में (10X3=30) तीस रू० बरामद हुए। उक्त व्यक्ति पैसा वसूले की सम्बन्ध में कड़ाई से पूछा तो बताया कि मैं नो इन्ट्री प्वाइन्ट पर आने जाने वाले लोगों से डरा धमकाकर पैसा ले रहा था। उस दिन जो पैसा मैंने लोगों से लिया था वह खर्च हो गये हैं। यह तीस रू० में अपने घर से किराये के लिये लेकर आया था। इनका यह अपराध एक दण्डनीय अपराध है। धारा-384 आई०पी०सी० अवगत कराते हुए समय 16.25 बजे पुलिस हिरासत में लिया। दौराने गिरफ्तारी मा० सर्वोच्च न्यायालय व मानवाधिकार आयोग के आदेशो व निर्देशों का पूर्णतः पालन किया गया। वर्दी का उतरवाकर सादा कपड़े पहनाये गये। फर्द मौके पर लिखकर पढ़कर सुनाकर सम्बन्धित के अलामात बनवाये जा रह हैं। दौराने कार्यवाही जनता के काफी लोग आ गये थे जिनसे गवाही के लिये कहा गया तो बुराई भलाई का वास्ता देकर कोई भी व्यक्ति गवाही देने को तैयार नहीं हुआ। गिरफ्तारी की सूचना थाना आकर अभियुक्त के परिजनों अकब से दी जायेगी। फर्द की कार्बन कापी अभियुक्त को मौके पर दी गयी। ह० हिन्दी राम गोपाल, ह० हिन्दी का० राम सिंह दिनांक-27.09.20 थाना लोनार, हरदोई, ह० अंग्रेजी अपठनीय एस०आई० 27.09.2020 (ऋषि कपूर उ० नि०) थाना लोनार, हरदोई।"

12. As per the provisions of Section 383 I.P.C., it is necessary that there must be an aggrieved person in the case of extortion. Section 383 I.P.C. reads as under:-

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**"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".

### *Illustrations*

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion."

13. Section 384 I.P.C. reads as under:-

*"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."*

14. Evidently, the trial court rejected the discharge application in the most mechanical manner without considering the aforesaid provisions as well as the pronouncement of Hon'ble Apex Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 SCC (Cri.) 426*** (Para 102). In the aforesaid judgement, Hon'ble Apex Court observed that, in case, no offense is made out after going through the entire F.I.R. or the evidence collected by the Investigating Officer, the F.I.R. as well as charge-sheet and its consequential proceedings are liable to be set aside.

15. Para 102 of the aforesaid judgement reads as under:-

**"102.** *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be*

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possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

16. In the aforesaid context, the observations made by Hon'ble Apex Court in the case of **Salib @ Shalu @ Salim vs. State of U.P. and others** reported in **Criminal Appeal No. 2344 of 2023 (Arising out of S.L.P. (Criminal) No. 3152 of 2023) dated 08.08.2023**, in paragraphs nos. 22, 23, 24 & 25 are being referred hereinbelow:-

"22. So from the aforesaid, it is clear that one of the necessary ingredients of the offence of extortion is that the victim must be induced to deliver to any person any property or valuable security, etc. That is to say, the delivery of the property must be with consent which has been obtained by putting the person in fear of any injury. In contrast to theft, in extortion there is an element of consent, of course, obtained by putting the victim in fear of injury. In extortion, the will of the victim has to be overpowered by

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putting him or her in fear of injury. Forcibly taking any property will not come under this definition. It has to be shown that the person was induced to part with the property by putting him in fear of injury. The illustrations to the Section given in the IPC make this perfectly clear.

23. In the aforesaid context, we may refer to the following observations made by a Division Bench of the High Court of Patna in **Ramyad Singh v. Emperor in Criminal Revision No. 125 of 1931 (Pat)**:-

*"If the facts had been that the complainant's thumb had been forcibly seized by one of the petitioners and had been applied to the piece of paper notwithstanding his struggles and protests, then I would agree that there is good ground for saying that the offence committed whatever it may be, was not the offence of extortion because the complainant would not have been induced by the fear of injury but would have simply been the subject of actual physical compulsion."*

It was held:-

*"It is clear that this definition makes it necessary for the prosecution to prove that the victims Narain and Sheonandan were put in fear of injury to themselves or to others, and further, were thereby dishonestly induced to deliver papers containing their thumb impressions. The prosecution story in the present case goes no further than that thumb impressions were 'forcibly taken from them. The details of the forcible taking were apparently not put in evidence. The trial Court speaks of the wrists of the victims being caught and of their thumb impressions being then 'taken' The lower Courts only speak of the forcible taking of the victim's thumb impression; and as this does not necessarily involve inducing the victim to deliver papers with his thumb Impressions (papers which could no doubt be converted into valuable securities). I must hold that the offence of extortion is not established."*

24. Thus, it is relevant to note that nowhere the first informant has stated that out of fear, she paid Rs. 10 Lakh to the accused persons. To put it in other words, there is nothing to indicate that there was actual delivery of possession of property (money) by the person put in fear. In the absence of anything to even remotely suggest that the first informant parted with a particular amount after being put to fear of any injury, no offence under Section 386 of the IPC can be said to have been made out.

25. However, as observed earlier, the entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of **Bhajan Lal (supra)**. The parameters are:-

*"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of*

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Section 155(2) of the Code.

(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

17. It is evident from the record that no alleged photograph is annexed with the case diary. Further when there is no aggrieved person in the case of extortion, then merely on the basis of imagination, no such person can be implicated. As the charge-sheet was bet by Prosecuting Officer and approved by Circle Officer of the area in question in the most negligent manner without considering the ingredients of Section 383 I.P.C., therefore, this Court is of the view that the impugned charge-sheet dated 13.10.2020 and its consequential proceedings as well the summoning order dated 25.04.2022 along with the order dated 02.08.2023 are liable to be set aside and are hereby **set aside**.

18. With the above observations, the present application U/s 482 Cr.P.C. is **allowed**.

19. However, before parting with the judgement, it is worthy to be noted that the present case is the classic example of false implication, in which, the applicant has been victimized by implicating him falsely and, hence, he should be compensated with the cost of some token amount.

**20. Accordingly, a cost/sum of Rs. 2 lakhs be paid to applicant by District Magistrate, Hardoi who is head of criminal justice system in the district (as per Para 06 of U.P.**

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**Police Regulation) and Superintendent of Police, Hardoi within two months from today and also file a compliance report before Senior Registrar of this Court.**

21. Office is directed to communicate this order to the following authorities for information and necessary action, forthwith:-

(i) The Trial Court,

(ii) Legal Remembrancer, Government of U.P., Lucknow,

(iii) Principal Secretary, Department of Home, Government of U.P., Lucknow,

(iv) Director General of Police, U.P., Lucknow,

(v) Director General of Prosecution, U.P., Lucknow.

**Order Date :- 14.12.2023**

Arpan