

State (Nct Of Delhi) vs Brijesh Singh @ Brajesh Thakur Arun ... on 26 March, 2025

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

* IN THE HIGH COURT OF DELHI AT NEW DELHI
% Pronounced on: 26th March, 2018
+ CRL.REV.P. 440/2018
STATE (NCT OF DELHI)P
Through: Ms. Richa Dhawan, APP for
versus

BRIJESH SINGH @ BRAJESH THAKUR ARUN KUMAR
SINGHRespondent
Through: Ms. Priya Hingorani, Senior
Advocate with Mr. Swarn Jha, Mr.
Chandra Bhushan Prasad, Mr. Ravi
Anand, Ms. Pragya Priya, Mr.
Akhand Pratap Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

JUDGMENT

CHANDRA DHARI SINGH, J.

FACTUAL MATRIX

1. The instant revision petition under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") [now Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS")] has been filed on behalf of the petitioner seeking setting aside of the order dated 27th February, 2018 passed by the learned ASJ - 02 (FTC), New Delhi District, Patiala House Courts, New Delhi (hereinafter "ASJ") in Crl. Rev. no. 103/2017 arising out of the FIR no. 69/2007 registered at Police Station - Special Cell for offences punishable under Sections 387/420/467/468/471/506 of the Indian Penal Code, 1860 (hereinafter "IPC").

2. The complainant namely Mr. Sudhir Kumar lodged a complaint before the Joint Commissioner of Police, Special Cell, thereby, stating that he is in coal business and mafia-man namely Mr. Brijesh Singh/respondent herein along with his brother Mr. Tribhuvan Singh threatened to kill him in view of business rivalry.

3. It was also stated by the complainant that the Varanasi Police had arrested one shooter namely Mr. Raj Tiwari, who disclosed that he came to Varanasi to kill the complainant. It was also alleged that the aforesaid accused persons are indulged in coal business and have earned handsome money by way of murder and kidnapping, and the said money has been invested in Delhi and nearby area in real estate through one Mr. Sanjay (Devaria) and retired government officer namely Mr. Deepak Sah.

4. It was alleged by the complainant that whenever the accused persons visited Delhi, one Mr. Sanjay and Mr. Deepak provided them shelter and necessary facilities. Further, in Kolkata, they illegally invested through Mr. Deepak, Mr. Suresh Singh and Mr. Raju in the real estate.

5. It was also alleged that the complainant's maternal uncle namely Mr. Rajeev was murdered in the year 2003, at the behest of accused persons, by one Mr. Narender Mama in Kolkata, and complainant's coal business partner Mr. Gajender Singh was also murdered in February, 2007 on the instructions of the accused persons. Further, the complainant is also a witness in the said case as well as in the hit list of the gang of the accused persons.

6. As per the complaint, on 28th July, 2007, the complainant visited Delhi to conduct some business when he received a phone call from the respondent accused Mr. Brijesh Singh and Mr. Tribhuvan Singh at 7:15 PM (from mobile no. 9889388203 on mobile no. 9415230004).

7. During the said phone call, the complainant was allegedly threatened that his activities are being monitored, he was allegedly asked to send Rs. 50 Lakhs to Mr. Deepak and Rs. 25 Lakhs to Mr. Sanjay, he was also asked to file an affidavit in the murder case of Mr. Gajender and he was asked to close his coal business failing which he and his family would be murdered. In view of the same, the complaint was filed on 29th August, 2007.

8. On the basis of the above complaint, the present FIR was registered on 8th October, 2007 and respondent accused Mr. Brijesh Singh was arrested on 23rd January, 2008 at 10:00 AM from Big Bazar Ganpat Road, Bhubaneswar, Odisha and at the time of his arrest, two forged driving licenses in the name of Mr. Arun Kumar but with his own photographs were recovered from respondent's possession. Accused Mr. Deepak and Mr. Sanjay were also traced/searched but could not be arrested.

9. As per the material on record, during investigation, several documents pertaining to the respondent accused were recovered with regard to several bank accounts, arms license and various company accounts wherein he has been shown as Mr. Arun Kumar to conceal his identity. The recovered documents are one PAN card, arms license no. 1873-3/1983 in the name of Mr. Brijesh Singh having false address of „Asarganj, PS Tatapur, District Munger, Bihar , one passport bearing no. F4615310 and various bank accounts at different cities namely Kolkata, Bhubaneswar and Varanasi. Accordingly, a case was registered at Police Station - Laxmi Nagar, District Khurd, Odisha.

10. During investigation, several documents such as driving license and various bank accounts pertaining to the accused Mr. Tribhuvan Singh, wherein, he has been shown as Mr. Pawan Kumar

Singh to conceal his identity, were recovered.

11. It is pertinent to note here that the prosecution challenged the order dated 27th November, 2013 by way of a revision petition, which was allowed vide order dated 9th January, 2014. Thereafter, the accused respondent was discharged for the offences under MCOCA vide order dated 4th February, 2014. Further, the said order of discharge was challenged by the petitioner herein before the Coordinate Bench of this Court in Criminal Appeal no. 358/2014 which was dismissed vide order dated 16th May, 2014. The said order was again challenged before the Hon ble Supreme Court in Criminal Appeal no. 1750/2017 which was dismissed vide order dated 9th October, 2017. Prudent to note here that the respondent accused was discharged only with respect to the offences punishable under the MCOCA.

12. Thereafter, the chargesheet was filed in the instant FIR. Subsequently, on 5th June, 2013, accused Mr. Tribhuvan Singh was arrested from Tis Hazari Courts, Delhi pursuant to which he allegedly disclosed about his involvement in the present case by way of disclosure statement and accordingly a supplementary chargesheet was filed against him on 31st August, 2013. Thereafter, other two accused persons namely Mr. Deepak and Mr. Sanjay were already declared proclaimed offender by the Court concerned vide order dated 10th October, 2013. Following the same, two more supplementary chargesheets regarding the FSL result of the recovered documents were filed, out of which one supplementary chargesheet was filed in the year 2013 and another in the year 2014. The chargesheet in the present case was filed under Sections 384/387/419/420/467/468/471/474/174A/506/120B of the IPC against the accused persons.

13. Pursuant to the above, vide order dated 10th April, 2015, the learned Trial Court ordered for framing of charge against the respondent herein and Mr. Tribhuvan Singh for offences under Sections 387/419/420/467/468/471/474/120B/34 of the IPC. Thereafter, the learned Trial Court, vide order dated 1st October, 2015, framed the aforesaid charges against the respondent accused and Mr. Tribhuvan Singh. Both the orders were challenged by the respondent accused and Mr. Tribhuvan Singh in Crl. Rev no. 103/2017, wherein, vide order dated 27th February, 2018, the learned ASJ set aside the orders dated 10th April, 2015 and 1st October, 2015, thereby, discharging the respondent accused Mr. Brijesh Singh.

14. Being aggrieved by the order dated 27th February, 2018 passed by the learned ASJ, the petitioner has approached this Court seeking setting aside of the same.

PLEADINGS BEFORE THIS COURT

15. The petitioner has challenged the impugned order on the following grounds:

"...A. Because the impugned order passed by the learned Sessions Court is contrary to law and facts on record.

B. Because the impugned order is base on conjectures and surmises and against the settled principles of law.

C. Because the Learned Sessions Court wrongly and erroneously appreciated the fact that accused/Respondent was charged with another accused for the offence U/s. 3 & 4 MCOC Act. The said FIR was registered on 05.03.2013. After the completion of investigation chargesheet was filed before the competent court on 26.09.2013 and the case under MCOC Act arose out of the FIR No. 69/2007 and the case was the genesis for registration of FIR and MCOC Act against the accused/Respondent herein.

Prosecution moved an application U/s. 323 Cr. PC on 10.10.2013 to club the matter with FIR No. 0/2013 U/s. 3 & 4 MCOC Act before Ld. CMM, New Delhi on the ground of connectivity, this was dismissed on 27.11.2013 by the Learned CMM. Prosecution challenged the said order by filing a Criminal Revision Petition before Ld. ASJ, New Delhi which was allowed by order dated 09.01.2014 and both the case were clubbed together and the present case was transferred to the Learned ASJ Court which was dealt with the MCOC Act cases. After that accused/Respondent was discharged for offences under MCOC Act vide order dated 04.02.2014 and the present case was returned to the Learned CMM for trial.

*** D. Because the Learned Sessions Court wrongly and erroneously did not appreciate the fact that during investigation, several documents pertaining to accused/Respondent Brijesh Singh were recovered i.e. regarding several bank account, arms licence and various companies accounts wherein he has been shown as Arun Kumar to conceal his identity. The recovered documents are one PAN Card, Arms licence No. 1873-3/1983 in the name of Brijesh Singh as false address of R/o Asarganj, P.S. Tatarpur, District Munger, Bihar one passport bearing No. F 4615310 and various bank accounts at different cities of Kolkata, Bhubaneswar, Varanasi which are as follows:

*** E. Because, Ld. Sessions Court wrongly and erroneously did not appreciate the fact that another accused Tribhuvan Singh was arrested in the present case after five years of registration of FIR due to said reasons and annual Income Tax Return of Sanjana Viniyog Pvt. Ltd., in which both the accused were directors was also recovered, and a case was registered at PS Laxmi Nagar, District Khurd and after the arrest and recovery of forged documents, charge sheet was filed.

F. Because the Ld. Sessions Court wrongly and erroneously did not appreciate the fact that during further investigation, several documents pertaining to another accused Tribhuvan Singh regarding several Bank accounts, driving license and various bank accounts, driving license and various bank accounts wherein he has been shown as Pawan Kumar Singh to conceal his identity were recovered i.e. Driving Licence No. 10264/OK/06 fake passport No. 1552516 (File No. 001575/07)-07 PAN Card, various Bank accounts the details of which are as follows:

*** G. Because, Ld. Sessions Judge wrongly and erroneously did not appreciate the fact that the involvement of accused persons in as many as 13 heinous nature of cases

and for the purpose of committing heinous offences accused Brijesh Singh committed several illegal transactions and committed forgery by assuming fictitious identity in the name of Arun Kumar Singh and on the basis of fake identity he not only got issued driving licence and also opened several bank accounts in various Bank and also issued arms licence, PAN Card and FSL has confirmed that photograph and signatures of the document matched with the accused Brijesh Singh. The said documents were prepared by accused/Respondent and by another accused Tribhuvan Singh for the purpose of hiding their true identity so that even after commission of offence in the present case both the accused persons entered into a conspiracy and created false documents and made a threatening calls to the complainant.

*** K. Because, the Ld. Session court wrongly and erroneously did not follow the guidelines given by the Hon'ble Supreme Court of India in catena of cases as given hereinunder:

(i) Union of India Vs. Prafulla reported as 1979 SC 366 AIR;

(ii) State of Maharashtra & Ors. Vs. Som Nath Thapa & Ors. reported in 1996 (4) SCC 659;

(iii) Sajjan Kumar Vs. CBI (2010) 9 SCC 368;

(iv) State of Orissa Vs. Debendra Nath Padhi 2003 II AD(Crl.) SC 69 and Subhendra Vs. State 1996 665..."

16. The instant petition has been opposed by the respondent on the following grounds:

"...9. At the outset, it is submitted that the charge u/s 419,420,467,468,471,471 and 474 of IPG ought not to have been added to the present crime as the alleged crimes were not committed either in the territorial jurisdiction of this Hon'ble Court or during the course of same transaction.

10. It is submitted that there is no document on record to show that complainant, Sudhir Singh in FIR No. 69/2007 is into coal business. It is pertinent to mention here that complainant, Sudhir Singh name figures out in the list of history sheeter of Uttar Pradesh Government.

11. It is submitted that there is no document on record to show that Respondent was/is into coal business and hence there was simply no occasion or motive for Respondent to call complainant to stop his coal business.

18. It is submitted that the PAN card in the name of Arun Singh has been procured from UTI Technologies, Calcutta. It is used for filing Annual Returns of the companies, opening and operating bank accounts, and for acquiring real estate in the State of Orissa, and it is only the Courts at Calcutta or at Orissa, which would have jurisdiction to try Respondent for the said offence. It is the case of the prosecution itself that one Rajesh Khatri is being tried for Section 419, 468 and 216 of IPC for assisting the Respondent Brijesh Singh in making these false documents.

19. It is pertinent to note that the Respondent Brijesh Singh does not own any property in the name of Arun Singh in Delhi. He has not used any documents in the name of Arun Singh in Delhi, and/or represented himself as Arun Singh to anyone within the jurisdiction of this Hon'ble Court. In fact, there is also no material to suggest that the Respondent Brijesh Singh had ever been in Delhi.

31. It is submitted that Ld. ASJ has correctly held that there is no material to show that any impersonation in the name of Arun Singh was made by Respondent Brijesh Singh at Delhi. It is not the case of the prosecution that the Respondent within the territorial jurisdiction of this Hon'ble Court has deceived anyone by disclosing his identity as Arun Singh. It is also not the case of the prosecution that Respondent had impersonated himself as Arun Singh in the territorial jurisdiction of this Hon'ble Court. Even it is not the case of the complainant Sudhir Singh that he was threatened in the name of Arun Singh and therefore, this Hon'ble Court cannot try the accused for Section 419 of IPC.

32. It is submitted that Ld. ASJ rightly held that the following documents:-

- i) PAN card in the name of Arun Singh,
- ii) Motor Driving License in the name of Arun Singh,
- iii) Incorporation of two companies where Accused No.1 has impersonated himself as Arun Singh and became Director in the said name,
- iv) Income Tax Returns in the name of said Arun Singh were alleged to be forged/fabricated by the Respondent V Brijesh Singh, and
- v) Bank accounts and investment in real estate in the name of Arun Singh which were alleged to be forged/fabricated by the Respondent Brijesh Singh have not been committed within the territorial jurisdiction of this Hon'ble Court.

*** Section 178 of Cr.P.C envisages four situations

i) when it is uncertain in which of the several local areas an offence was committed,

36. The Ld. Additional Sessions Judge virtuously upheld the intent of the Legislature and appreciated the general principal of the law under criminal procedure that is Section 177 of Cr.P.C provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. If a particular act is a complete offence by itself, the offence is to be inquired into and tried only by the Court, within whose jurisdiction the act was committed. Section 178 to 185 are exceptions to this Rule, and provides the circumstances in which an accused may be tried at a place other than the place of the commission of offence.

*** Section 219, 220, 221 and 223 are exceptions to the general rule prescribed in Section 218. Under certain circumstances, an accused can be tried for more than one offence in the same trial in order to avoid multiplicity of trials. These circumstances are mentioned in Section 219 to 221 and 223 of Cr.P.C.

Section 219 of Cr.P.C allows for trial of three offences committed within a span of twelve months. In the instant case, Section 219 has no application.

Section 220 of Cr.P.C allows for trial of one series of act if they are so connected together as to form the same transaction. To constitute same transaction, the series of acts alleged against the accused must be connected together in some way. For instance, by proximity of time, unity of place, unity or community of purpose or design and continuity of action. The main test must really be continuity of action. In the present case, there is no connection whatsoever between the offence of alleged threats amounting to criminal intimidation punishable u/s 506 and demands of extortion punishable u/s 385 and / or 387 of I.P.C to Sudhir Singh with the offence of obtaining fake identity and preparing and using false documents. Certainly, it is not the case of the prosecution that the Respondent had obtained fake identity, prepared false documents, and used the same for the purposes of threatening Sudhir Singh. The alleged offence with regard to Sudhir Singh has nothing to do with the aforesaid act of obtaining fake identity, preparing false documents, and using the same which are punishable u/s 419, 468 and 471 of IPG. They are two distinct and different acts and therefore, the charge under these Sections viz. 419, 468 and 471 of IPG cannot be tried together with the charge u/s 385 / 387 and 506(11) of LP.G. There is no connection whatsoever between the alleged offence of Section 419, 468 and 471 of I.P.G with the alleged complaint of Sudhir Singh, and therefore, even by virtue of Section 220 of Gr.P.G, the said charges cannot be tried along with Section 385, 387 and 506(11) of IPG as they have not been committed in the course of same transaction.

55. The Ld. ASJ was inerrant in his finding that Ld Trial Court failed to understand that in a case where the petitioner own up the document and there is no evidence to show that the document was executed claiming it to be someone else's or has been altered or tampered, no offence under Sections 464, 468, 471 or 474 IPC is made out. Reference may be made to the judgment in Mohd. Ibrahim v. State of Bihar (2009) 8 SCC 751.

56. The Ld. Additional Sessions Judge has successfully applied the test, at the stage of charge and by the virtue of power laid upon him under the Code, that the court must have at least prima facie evidence in respect of the offences. As discussed herein above, the present case is a case of no evidence, not even leading to an inference of "mere suspicion" let alone "strong suspicion". Reference may be made to the judgment in CBI v. K. Narayana Rao(2012) 9 SCC 512, paragraph 12-13.

*** And further there is no provision in Gr.P.G where an accused can be tried for charges u/s 419, 468 and 471 of IPG, which have been admittedly not committed within the jurisdiction of this Hon'ble Court.

38. The Ld. ASJ unerringly held that an extortion call was made from mobile number 9889388203 to the mobile number of the complainant, Sudhir Singh on 28.8.2007. This allegation which is the fundamental allegation in the present case is not supported by any evidence let alone prima facie evidence.

53. The Ld. ASJ has rightfully discharged the Respondent because the Ld Trial Court failed to understand that adding offences which are not part of same transaction is an attempt to investigate offences beyond their jurisdiction by Investigating Agency.

54. The Ld. Additional Session Judge has unerringly concluded that the Ld Trial Court failed to understand that it also has no jurisdiction in terms of Section 177-184 of the Cr.F.C which has been explained by the Hon'ble Supreme Court in Dasrath singh v. State of Maharashtra (2014) 9 SCC 129.

56. The Ld. Additional Sessions Judge has successfully applied the test, at the stage of charge and by the virtue of power laid upon him under the Code, that the court must have at least prima facie evidence in respect of the offences. As discussed herein above, the present case is a case of no evidence, not even leading to an inference of "mere suspicion" let alone "strong suspicion". Reference may be made to the judgment in CBI v. K. Narayana Rao(2012) 9 SCC 512, paragraph 12-13..."

17. The petitioner has also filed rejoinder rebutting the contentions of the respondent. Relevant extract of the same is as under:

1-4 That the contents of the corresponding paras of the reply filed by the Respondent are admitted to the extent of the matter of record whereas the rest is denied.

5 That the contents of the corresponding paras of the reply filed by the Respondent are admitted to the extent of the matter of record whereas the rest is denied.

6(a)- That the content of the corresponding paras are G) admitted to the extent of the matter of record whereas the rest is denied. The subject matter of FIR No. 22/08 u/s 25/27 Arms Act, PS Laxmi Nagar, Distt. Khurd, Orisa is entirely different from the present case. The forged documents alleged to be recovered in that case are not the same as the ones recovered in the present case.

7-8 That the contents of the corresponding para are a matter of record and needs no reply **REPLY TO SUBMISSIONS ON MERITS FILED BY THE RESPONDENT**

9. That the contents of the corresponding para stating that the charge under Section 419, 420, 467, 468, 471 & 474 of I.P.C. ought not to have been added to the present crime as the alleged crime is not committed either in the territorial jurisdiction of this Hon'ble Court or during the course of same transaction is false, misleading, untenable in the eyes of law and hence vehemently denied. It is respectfully submitted that the Complainant namely Sudhir Kumar in the present case received a threatening call from the Respondent herein while the Complainant was in Delhi. Being threatened by the said call an FIR No.69/2007 was registered at Special Cell, Delhi which led the Investigation Authorities to discover certain incriminating documents against the accused The recovered documents from the accused indicated the modus operandi adopted by the accused person(s) through which threatening calls to the Complainant by the accused. That it is respectfully submitted that the accused persons had threatened the Complainant, who was in Delhi when such call was received. Further it is submitted that the charges mentioned in the corresponding paragraph are part of the same transaction to the present crime and hence this Court has jurisdiction to try the same. The offence alleged against the accused is a complete offence by itself and the same is to be enquired into and tried by the Court within whose jurisdiction it was committed.

10- That the contents of the corresponding paragraphs 11 are denied in its entirety. It is respectfully submitted that the Complainant was not directly involved in the coal business, but acted as a broker between the carrier and the market and hence there are no such documents to show that the Complainant was in coal business, his involvement was in marginal capacity. 12 That the contents of the corresponding para are incorrect and misleading, hence denied in its entirety subject to the matter of records. The disclosure of Raju Tiwari is not relevant for proving the present crime of extortion committed by the petitioner against the complainant. Reference to Raju Tiwari is relevant to set out the background of the case.

13 That the contents of the corresponding paras are misleading and hence denied 14 That the contents of the corresponding paras are misleading in nature and hence denied in its entirety. It is most respectfully submitted that Gajendra Singh was the maternal uncle to the Complainant; though it is admitted that the Complainant was not a witness to Gajendra Singh's murder case it is important to know that the Complainant played an active role in harnessing justice for his demised maternal uncle. The fact relating to Gajendra Singh's murder case are referred to in the petition in order to give the background circumstances prevailing at the time of registration of the FIR herein and the fact that the petitioner faced genuine risk of harm from the respondent.

15. That the contents of the corresponding para are denied in its entirety. It is most respectfully submitted that answer to the same has been dealt in the reply to para No.9 and hence the same is

not repeated herein for the sake of brevity.

16 That the contents of the corresponding para are denied in its entirety. It is most respectfully submitted that answer to the same has been dealt in the reply to para No.9 and hence the same is not repeated herein for the sake of brevity. Further it is submitted that the Respondent(s) adopted different alias to avoid the crutches of law and therefore the accused might not disclosed his fake alias (i.e. Arun Singh) to the Complainant while making threatening calls. It is noticeable that it had been alleged against the accused persons that they were absconding and were wanted in more than 25 cases, that due to various names/ alias/ identities of respondents, they could not be arrested in various cases in many states for such a long period. Threatening calls made by the Respondents in their actual name and Complainant had lodged the complaint in this respect. It has to be noted that one of the accused (Tribhuvan Singh) was also carrying a fake Identity Card with respect to his actual identity making him liable to be prosecuted for possession of forged documents.

17 That the contents of the corresponding para are denied in its entirety. It is most respectfully submitted that answer to the same has been dealt in the reply to para No.9 and hence the same is not repeated herein for the sake of brevity 18 That the contents of the corresponding para are misleading, untrue, false and hence vehemently denied in its entirety. It is respectfully submitted that Forensic Science Laboratory (FSL) Report was obtained regarding the documents recovered from the accused persons, that the handwriting and signatures of accused persons were also matched with the questioned handwriting and signatures on the recovered documents, such documents pertained to PAN, Driving License and Bank Account. These documents further indicated toward modus operandi adopted by the accused persons to make threatening calls and concealing their identities in order to remain untraced. The averment in the corresponding paragraph that since forgery and recovery of forged documents are not part of the same transaction, and Thereofre barring the jurisdiction of this Hon'ble Court is untenable is a misplaced contention because all of the above transactions are parts of one common transaction as held vide order dated 10.04.2019 passed by the Ld. MM, Patiala House Courts, New Delhi.

19 It is denied that the respondent has never been in Delhi or that he has never represented himself to be Amn Singh within the jurisdiction of the Delhi. 20- That the contents of the corresponding para are false, 21 misleading, untrue and hence denied in its entirety. It is respectfully submitted that the answer to the averments made in the corresponding para has already been dealt with in the above replies and hence the same has not been repeated herein for the sake of brevity. Documents by which the respondent represent himself as Arun Singh are of such a nature that they can be used in all of India.

22 That the contents of the corresponding para are false, misleading, untrue and hence denied in its entirety. It is most respectfully submitted that another accused Tribhuvan Singh was arrested in the present case after five years of registration of FIR due to said reasons and annual Income Tax Returns of SanjanaViniyog Pvt. Ltd., in which both the accused were directors was also recovered, and a case was registered at PS Laxmi Nagar, District Khurdi and after the arrest and recovery of forged documents, charge sheet was filed 23 That the contents of the corresponding para are false, misleading, untrue and hence denied in its entirety. It is respectfully submitted that sections are

added as per the evidence surfaced during the investigation 24 That the contents of the corresponding para are matter of record needs no reply.

25 It is denied that the content of final report dated 18/08/17 in any manner indicate that the case against the respondent is baseless and false.

26 That the contents of the corresponding para are matter of record whereas, it is most respectfully submitted that the Criminal Appeal No. 1750/2017 filed by the Petitioner before the Hon'ble Supreme Court which was dismissed by the Hon'ble Supreme Court arose out of FIR No. 10/2013 under Section 3 & 4 of the Maharashtra Control of Organized Crime Act, 1999. It is pertinent to note that the accused was discharged by the Hon'ble Supreme Court only in MCQC Act and not in the present case in which the Complainant filed the complaint by the name of the accused Respondent herein with the name of another accused Tribhuvan Singh. Therefore, it is clear that the Respondent herein is trying to mislead this Hon'ble Court by quoting specific portions out of context from the order of discharge passed by the Hon'ble Supreme Court in Criminal Appeal No. 1750/2017.

27 That the contents of the corresponding para are matter of record hence needs no reply 28 That the contents of the corresponding para are misleading, untrue and hence denied.

29- That the contents of the corresponding para are 31 misleading, untrue and hence denied. It is most respectfully submitted that the contentions regarding territorial jurisdiction of the Courts of Delhi has already been dealt with in the replies to the above mentioned paragraphs and hence not repeated herein for the sake of brevity. Further the complainant takes leave to refer to the grounds on which the impugned order of the Ld. ASJ have been assailed as stated in the petition in response to this para.

32 That the contents of the corresponding para are admitted to the extent there are in keeping with the contents of the petition, whereas rest of the contents in the corresponding paras are vehemently denied. 33- That the contents of the corresponding para are 35 misleading, incorrect and hence denied in its entirety.

It is most respectfully submitted that the contentions regarding territorial jurisdiction have already been dealt with in the replies to the above mentioned paragraphs as well as the grounds contained in the petition and hence not repeated herein for the sake of brevity.

36 That the contents of the corresponding para are misleading and hence denied in its entirety. It is submitted that the present case attracts jurisdiction of this Hon'ble Court in view of relevant provisions under Chapter XIII of Cr.P.C where it is uncertain that in which of the several areas the offence was committed and hence, the Courts of Delhi have the jurisdiction to try the instant matter.

37 That the contents of the corresponding para are misleading and hence denied in its entirety. It is contended in the corresponding para that there is no connection whatsoever between the offence of alleged threats amounting to criminal intimidation punishable u/s 506 and demands of extortion punishable u/s 385, 387 IPC to the Complainant with the offence of obtaining fake identity/

preparing and using false documents. In this respect, it is submitted that though criminal intimidation been committed by the Respondent using his true identity, the same has been consequently covered up by the Respondent using fictitious identity which enabled the Respondent to remain untraced. Hence a conclusion can be reached that the offences u/s 419, 468, 471 IPC and charge u/s 385/387 and 506 (ii) IPC are part of the same transaction as clearly they are inter-related to each other.

38- That the contents of the corresponding paras are 39 untenable at this stage of the proceeding and hence, denied.

4-58 That the contents of the corresponding para are baseless, misleading, misconceived and hence denied. It is submitted that the issues pertaining to the corresponding paragraphs have already been dealt with in the paragraphs above and in the grounds on the basis of which impugned order of the Ld. ASJ have been assailed as contained in the petition and hence not repeated herein for the sake of brevity.

18. The respondent has also filed the written submissions dated 9th December, 2024, relevant portion of which is hereunder:

"..1. Entire prosecution case revolves around two set of allegations, First in relation to documents and Second in relation to alleged extortion call received by the complainant.

5. SUBMISSIONS ON THE ASPECT OF ALLEGED EXORTION CALL I. On the alleged date of extortion i.e. 28.08.2007 call, no PCR Call was made by the complainant despite making 37 calls to different persons.

II. Complaint filed after a gap of two days directly in the office of Joint Commissioner of Police, Special Cell, New Delhi on 30.08.2007.

iii. No complaint filed ever with the Varanasi Police. Complainant resident of Varanasi and respondent also resident of Varanasi.

iv. Location of the PCO was never established from where the alleged extortion was made.

v. No statement u/s 161 Cr.P.C. was recorded of PCO Owner (Riyaz).

vi. No evidence that respondent has any connection with the PCO Owner (Riyaz).

vii CDR of the PCO Owner was never obtained by the Investigating Agency.

viii. Only one single call is alleged to be made by the respondent.

ix. No follow up call is alleged to be made by the respondent either by himself or any one on behalf of the respondent.

No allegation of any delivery of any property or valuable security by the complainant post receiving of the alleged extortion call. No evidence submitted by the complainant with the IO that he actually travelled to Delhi on 28.08.2007 in the form of any Train or Flight tickets or he travelled via road.

8. Time and again Hon'ble Supreme Court and this Hon'ble Court observed that in a case if there can be no possibility of any conviction on the basis of the evidence relied upon by the prosecution, then the Ld Trial Court is within its right to discharge the accused from all the charges. The respondent case categorically falls in the same category..."

SUBMISSIONS (on behalf of the petitioner)

19. Ms. Richa Dhawan, learned APP appearing on behalf of the petitioner-State submitted that the impugned order has been passed without taking into consideration the entire fact and circumstances of the case and thus, the same is liable to be set aside.

20. It is submitted that the impugned order is contrary to the law and facts on record as the same is based on conjectures and surmises. It is submitted that the learned ASJ failed to appreciate the fact that the respondent was charged alongwith another accused for the offences punishable under Sections 3 and 4 of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter "MCOCA") in FIR no. 10/2013.

21. It is submitted that the said FIR no. 10/2013 was registered on 5th March, 2013 and after completion of investigation, chargesheet was filed before the Court concerned on 26th September, 2013, and the case under MCOCA arose out of the FIR no. 69/2007 following which the said case became the genesis for the registration of FIR no. 10/2013 under the MCOCA against the respondent herein.

22. It is submitted that in the instant FIR, the prosecution had moved an application under Section 323 of the CrPC on 10th October, 2013 to club the instant FIR, i.e., FIR no. 69/2007 with FIR no. 10/2013 on the ground that both the FIRs are against the common accused, and the said application was dismissed by the Court concerned on 27th November, 2013.

23. It is further submitted that pursuant to the above, the prosecution challenged the order dated 27th November, 2013 by way of a revision petition, which was allowed vide order dated 9th January, 2014 and both the cases were clubbed together and the present case was transferred to the Court

concerned. Thereafter, the accused respondent was discharged for the offences under MCOCA vide order dated 4 th February, 2014 and the present case was returned to the learned Trial Court for further adjudication.

24. It is submitted that the aforesaid order of discharge was challenged by the petitioner herein before the Coordinate Bench of this Court in Criminal Appeal no. 358/2014 which was dismissed vide order dated 16 th May, 2014. The said order was again challenged before the Hon ble Supreme Court in Criminal Appeal no. 1750/2017 which was dismissed vide order dated 9th October, 2017. It is submitted that the respondent accused was discharged only with respect to the offences punishable under the MCOCA and not in the present FIR in which the instant complainant had made specific allegations against the accused respondent along with the co-accused namely Mr. Tribhuvan Singh. Moreover, in the instant FIR, the complainant had mentioned specific mobile number belonging to the accused and the call details of the same are on record.

25. It is submitted that the documents such as one PAN card, arms license no. 1873-3/1983 in the name of Mr. Brijesh Singh having false address of „Asarganj, PS Tatapur, District Munger, Bihar , one passport bearing no. F4615310 and various bank accounts at different cities such as Kolkata, Bhubaneswar and Varanasi were recovered from the respondent which led to the registration of a case at Police Station - Laxmi Nagar, District Khurd, Odisha. It is further submitted that learned ASJ erred in not appreciating the fact that during the investigation, several documents pertaining to the respondent accused were recovered with regard to several bank accounts, arms license and various company accounts wherein he has been shown as Mr. Arun Kumar to conceal his identity.

26. It is submitted that the learned ASJ failed to appreciate that during further investigation, several documents pertaining to another accused Mr. Tribhuvan Singh, regarding several bank accounts, driving license and fake passport were recovered in the name of one Mr. Pawan Kumar Singh. Furthermore, the documents wherein the name Mr. Pawan Kumar Singh was mentioned as director of various companies were also recovered.

27. It is further submitted that the aforesaid documents were prepared by the respondent accused and co-accused Mr. Tribhuvan Singh to hide their true identity to commit the offences in the present case by entering into a conspiracy and making threatening calls to the complainant.

28. It is submitted that while passing the impugned order, the learned ASJ observed that the STD/PCO Booth, from which the phone call was made by the accused persons is situated at Varanasi and no owner of the said STD Booth has been called and interrogated as a witness. It is further submitted that this observation is not legally tenable at the stage of framing charge and the same might be the relevant fact at the time of evidence but not at the stage of charge when there is sufficient material on record to show that the complainant has named both the accused persons and also gave his own mobile number as well as the phone number from which he received the threatening calls.

29. Therefore, in view of the foregoing, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for. (on behalf of the respondent)

30. Per Contra, Ms. Priya Hingorani, learned senior counsel appearing on behalf of the respondent accused vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merit.

31. It is submitted that the learned ASJ did not commit any error of law while passing the impugned order as the same has been passed after taking into consideration the entire facts and circumstances available on record.

32. It is submitted that there is no document on record to show that the complainant is in the coal business. It is pertinent to mention here that the complainant's name is mentioned in the list of history sheet of the Uttar Pradesh Government. It is further submitted that there is no document on record to show that the respondent was or is in the coal business and hence, there was simply no occasion or motive for the respondent to call the complainant to stop his coal business.

33. It is submitted that the complainant is not a witness in Gajendra Singh murder case. The complainant only wrote down the application on behalf of one Mr. Sanjiv Singh. Further, since the complainant was not a witness in Gajendra Singh murder case, there was no occasion for the respondent to call the complainant to file any affidavit.

34. It is submitted that there is no material to show impersonation in the name of Mr. Arun Singh by the respondent at Delhi and it is not the case of the prosecution that the respondent has deceived anyone within the territorial jurisdiction of this Court by disclosing his identity as Mr. Arun Singh. Further, it is also not the case of the prosecution that the respondent had impersonated himself as Mr. Arun Singh in the territorial jurisdiction of this Court. Moreover, it is not even the case of the complainant that he was threatened in the name of Mr. Arun Singh and therefore, this Court cannot try the respondent for the offence under Section 419 of the IPC in the present FIR.

35. It is submitted that the PAN card in the name of Mr. Arun Singh has been procured from UTI Technologies, Calcutta which is used for filing Annual Returns of the companies, opening and operating bank accounts, and for acquiring real estate in the State of Orissa, and it is only the Courts at Calcutta or at Orissa which would have jurisdiction to try respondent for the said offence. Further, it is the case of the prosecution itself that one Mr. Rajesh Khatri, who assisted the respondent herein in creating the aforementioned false documents, is being tried for Sections 419, 468 and 216 of the IPC.

36. It is submitted that qua two accused namely Mr. Deepak Kumar and Mr. Sanjay Pratap Singh, final report was filed and the Court concerned accepted the same vide order dated 18th August, 2017. This further fortifies the case of the respondent that the entire allegation alleged by the complainant is baseless and false.

37. It is submitted that the learned ASJ correctly held that a Court has no power to try an accused for an offence committed wholly outside the limits of its jurisdiction. It is submitted that in the present case, there is no connection whatsoever between the offence of alleged threats amounting to criminal intimidation punishable under Section 506 of the IPC and extortion punishable under

Section 385/387 of the IPC with the offence of obtaining, preparing and using fake identity documents.

38. It is further submitted that it is not the case of the prosecution that the respondent had obtained fake identity, prepared false documents, and used the same for the purposes of threatening the complainant. The alleged offence with regard to the complainant has nothing to do with the aforesaid act of obtaining fake identity, preparing false documents and using the same. They are two distinct acts, and therefore, cannot be tried together.

39. It is submitted that the learned ASJ held that an extortion call was made from mobile number 9889388203 to the mobile number of the complainant, Mr. Sudhir Singh on 28th August, 2007. This allegation, which is the fundamental in the present case, is not supported by any evidence let alone prima facie evidence.

40. It is submitted that the learned ASJ has correctly found that the statement recorded under Section 161 of the CrPC by Mr. Reyaz s, who runs the STD booth and owns the phone number 9889388203, from which the alleged call was made to the complainant, was never examined during the course of the investigation.

41. It is submitted that it is also the case of the prosecution, as evident from the submissions of the Public Prosecutor in proceedings held on 5th June, 2013, that the STD booth, from where the alleged call was made, has not been located. The sequitur of the above is that the prosecution has not even prima facie shown that a call was made by the respondent or Mr. Tribhuvan Singh, let alone a threatening call.

42. It is submitted that the learned ASJ correctly held that the failure of the prosecution to either examine Mr. Reyaz, not making him a witness in the list of witnesses, or exhibiting the CDR, which has admittedly been obtained, can only lead to the inference that the prosecution has failed to show that a call was made by the respondent or Mr. Tribhuvan Singh to the complainant.

43. It is submitted that the learned ASJ has correctly held that the ingredients of Sections 384 and 387 of the IPC require a threat and action on the threat, i.e., a person must be put in fear of injury and that fear must induce that person to deliver property or valuable property. In the present case, there is no evidence of a threat, and admittedly, there is no delivery of any property or valuable security.

44. It is submitted that it has been rightly observed that the conduct of the complainant shows that he was under no threat. The call has been alleged to be received on 28th August, 2007 at 7:15 PM. Thereafter, as per the complainant s CDR, he makes about 37 calls and pertinently, no call was made to a PCR or to the police. The complainant, in fact, had long conversations with the people as evident from the CDR. It is also submitted that on 29th August, 2007, the complainant purportedly makes this complaint after reaching Varanasi, and that too the complaint is made to the office of the Joint Commissioner of Police on 30 th August, 2007. The falsity of the complaint is evident from the fact that while in Delhi, the complainant does not make any complaint, however, he makes it in

Varanasi, which according to him is the home town of the respondent.

45. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be dismissed.

ANALYSIS AND FINDINGS

46. This Court has heard both the parties in detail, perused the material available on record including the written submissions and the judgment relied upon by both the parties.

47. Before advertng to the merits of the instant case, this Court deems it appropriate to discuss the scope of revisional powers of this Court enshrined under Sections 397 and 401 of the CrPC (now Sections 438 and 442 of the BNSS).

48. It is pertinent to mention that when a revision petition is filed before the High Court challenging an order passed in a previous revision petition decided by the Sessions Court, the scope of interference is even narrower. In *State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand & Ors.*¹, the Hon'ble Supreme Court observed that revisional powers should not be used to act as a second appellate forum, and interference is warranted only in cases where the order under challenge suffers from jurisdictional error, perversity, or results in a miscarriage of justice. The relevant paras are mentioned herein below:

"21. In embarking upon the minutest re-examination of the whole evidence at the revisional stage, the learned Judge of the High Court was totally oblivious of the self-restraint that he was required to exercise in a revision under Section 397 CrPC. On behalf of the accused, reliance is placed on the decision of this Court to which one of us (Justice Sabharwal) is a party i.e. *Ram Briksh Singh v. Ambika Yadav* [(2004) 7 SCC 665]. That was the case in which the High Court interfered in revision because material evidence was overlooked by the courts below.

22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 CrPC. Section 401 CrPC is a provision enabling the High Court to exercise all (2004) 7 SCC 659 powers of an appellate court, if necessary, in aid of power of superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court.

Section 397 CrPC confers power on the High Court or Sessions Court, as the case may be, "for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court". It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 CrPC conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 CrPC, read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power."

49. The Hon ble Supreme Court in K. Ravi v. State of Tamil Nadu & Anr.², has further elaborated the scope of revisional jurisdiction under Section 397 CrPC (now Section 438 of the BNSS) by referring to the observations made in the case of Amit Kapoor v. Ramesh Chander & Anr.³. The relevant paragraphs are mentioned herein as below:

"At this juncture, it would be apt to refer to the observations made by this Court in Amit Kapoor vs. Ramesh Chander and Another (2012) 9 SCC 460, explaining the scope of Section 397 Cr.P.C. It was held that -

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to 2024 INSC 642 (2012) 9 SCC 460 scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner."..."

50. In the present case, as the learned Sessions Court has already exercised its revisional jurisdiction and has examined the sufficiency of evidence and legal infirmities in the framing of charges, this Court must be cautious in interfering unless there is a glaring defect or miscarriage of justice apparent on the face of the record.

51. In the preceding paragraphs, this Court has discussed the powers of this Court under its revisional jurisdiction. Now this Court shall discuss the principles of framing of charges against an accused and what needs to be seen from the record to frame a particular charge. With respect to the same, the Hon ble Supreme Court in State of Madhya Pradesh v. Mohanlal Soni⁴ held that at the stage of framing of charges, the Courts are only required to evaluate the material on record to solely determine whether a prima facie case is made out against the accused or not. The relevant paragraph of the same is as under:

"..The crystallised judicial view is that at the stage of (2000) 6 SCC 338 framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused..."

52. Further, the aforesaid position of law was reaffirmed in Hardeep Singh v. State of Punjab⁵, wherein, the Hon ble Supreme Court held as under:

"..The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further..."

53. At this juncture, this Court finds it prudent to peruse the impugned order which is under challenge before this Court. It is imperative to state here that in the Crl. Rev no. 103/2017, the learned ASJ had passed two separate orders on 27th February, 2018.

54. One such order was passed under Section 5 of the Limitation Act, 1963 which has not been challenged by the petitioner as no such arguments have been advanced thereto. Therefore, this Court has not discussed the same.

55. Only the order dated 27th February, 2018, by virtue of which the respondent was discharged by the learned ASJ, is under challenge here and this Court shall now peruse the same. The relevant portion of the same is as under:

(2014) 3 SCC 92 "...15. I have gone through the record as well as the impugned order. My order shall deal with the offences of cheating and forgery u/s 419, 420, 467, 468, 471 & 474 IPG with respect to which charge has been framed before coming to offence of extortion. It is admitted case of prosecution that the forged documents were found from the possession of the petitioner at the time of his arrest in Orissa. These forged documents had no connection with the offence of extortion with respect to which original complaint was filed in Delhi.

In any event it is seen that the court at New Delhi does not have territorial jurisdiction with respect to the; offences committed at Orissa. It is also pertinent to mention here that a case was already registered under the provisions of forgery and in personation at PS Khurd, Orissa and the trial with respect to such forged documents is already pending before the local trial court at Orissa. Petitioner cannot be charged for the same offence twice as that will be in violation of the constitutional right guaranteed under Article-20 of the Constitution (double jeopardy). It is also seen that the original extortion call has no linkage with the forged documents and to come to the conclusion that accused persons were hiding their identity after making extortion call as the same shall amount to presuming that the extortion calls were made by the petitioner specially in view of the fact that no evidence has been collected by the 10 to connect the petitioner with the extortion call which I shall explain in the subsequent paras which dealing with the case of extortion.

16. It is seen that none of the recovered documents have either been prepared or used by the petitioner in Delhi. The prosecution would claim the benefit of Section 178 to 185 of Cr.PC as there is

no linkage between the alleged forged documents and the extortion call and the two offences are not part of some transactions.

17. The charge u/s 384 IRC for extortion I have carefully gone through the evidence collected by the IO with respect to the extortion call. It is pertinent to mention here that the prosecution agency had also chargesheeted the petitioner for offence under provisions of MCOCA. It is seen that learned ASJ while dealing with the MCOCA case discharged the petitioner from the MCOCA case. The said order was challenged by the prosecution before Hon'ble High Court but the order of learned ASJ was upheld and State challenged the order of Hon'ble Delhi High Court in "Criminal Appeal No. 1750/2017 (arising out of Special Leave Petition (Criminal) No. 5497/2015, State (NCT of Delhi) vs. Brijesh Singh Arun Kumar & Anr." before Hon'ble Supreme Court, which was dismissed with the following observations :

"FIR No. 69/2007 was registered on the basis of information given by one Sudhir Singh, who is admittedly a resident of plot no. 103, Saket Nagar, Varanasi, Uttar Pradesh. He is a politician and a businessman and when he was on a trip to Delhi, he was threatened by the respondents due to their business rivalry. Several facts pertaining to the illegal activities of the respondents in Uttar Pradesh have been mentioned in the FIR. Sudhir Singh complained of extortion by the respondents for payment of Rs. 50 lakhs as protection money. During the course of investigation, it was found that the call that was made on the mobile phone of Sudhir Singh was from a PCO at Varanasi. It appears from a close reading of the FIR and the chargesheet in FIR No. 69/2007, that there is no criminal activity pertaining to organized crime within the territory of Delhi and the complaint was filed by the informant at Delhi only for the purpose of invoking MCOCA..... After making enquiries with the authorities concerned, Mr. Luthra fairly submitted that the respondents are not in possession of any property in Delhi. As there is no organized crime committee by the respondents within the territory of Delhi, there is no cause of action for initiation of proceedings under MCOCA."

18. In the present case, complainant who is resident of Varanasi had received a mobile phone call on his number from mobile phone no 9889388203 on 28.08.2007. However, after receiving the said case, the complainant did not make any call to PGR nor he approached to local Police Station in Delhi having jurisdiction but chose to go back to Varanasi where also he did not make any complaint and waited till 30.08.2017 when he again came back to Delhi to file the complaint and that too before Joint Commissioner of Police, Special Cell, New Delhi instead of going to Police Station which is highly unusual. It was already observed by Hon'ble Supreme Court in MCOCA case faced by petitioner that accused (petitioner herein) had not committed any criminal activity of organized crime within the territory of Delhi and it seems that the complaint was filed in Delhi only for the purpose invoking MCOCA. Hon'ble Supreme Court further observed that petitioner has no property in Delhi and there is no cause of action for invoking MCOCA. It is also seen that IO failed to identify the location of local PCO and the details of said number. It is stated that the said owner was one Riyaz but IO failed to locate the said Riyaz and therefore, failed to either prosecute him or make him witness in the present case to show connectivity of present accused with offence IO could not collect

any evidence to show the connection of present petitioner with the said Riyaz in spite of having examined him as has been stated in the chargesheet. The prosecution was unable to locate STD booth from where the alleged call was made. It is also seen that the IO did not obtain CDR of the said call details of Riyaz. It is also admitted case of the prosecution that in pursuance to the threat there was no delivery of the property or valuable security and investigation officer in closure report vis a vis co-accused Deepak and Sanjay had admitted the said fact. Reference can be made to the judgment of 'R.S. Nayak vs. A.R. Antulay' (1986) 2 SCC 716, paragraph 60, and 'Dhananjay Vs. State of Bihar' (2007) 14 SCC 768, paragraph 9-11.

19. It is further seen that after receiving the extortion call at 07:15 p.m. on 28.08.2007, the complainant made 37 calls to different persons but he failed to make any call to PCR or to police. He chose not to make any complaint on 29.08.2007 when he came back to Varanasi which creates serious doubt on the credibility of the complaint before Joint Commissioner of Police, Special Cell as has been observed by Hon'ble Supreme Court in the MCOCA case faced by the petitioner that it seems that the said complaint has been filed just to invoke the MCOCA jurisdiction. It is seen that there is delay of 40 days in registration of FIR from the day of incident. It is seen that there is no evidence connecting the petitioner to the threatening calls including voice analysis and spectrography. There is no evidence to show that the petitioner visited the alleged PCO and had made extortion call to the complainant. There is no effort of the 10 to collect the evidence from the witnesses who could have identified the petitioner having given threat to the complainant.

20. It is seen that only one single call was made and it is admitted case of the prosecution that no call was made by co-accused Deepak and Sanjay Pratap Singh who were subsequently discharged from the present case for lack of evidence. It is seen that there cannot be two yardsticks with respect to the same complainant i.e. one discharging coaccused and another one for framing charge against the accused/petitioner herein. Because of the aforesaid reasons, I do not see any evidence on record to even create suspicion for prima-facie framing charge for offences u/s u/s 387/419/420/467/468/471/474/120- B/34 IPG against the accused. In the judgments of 'UOI vs. Prafulla Kumar Samal and Another [(AIR 1979, Supreme Court 366(1))]; 'Dilawar Balu Kurane Vs. State of Maharashtra [(200), Supreme Court Cases 135]', and 'Sajjan Kumar Vs. CBI, [(2010) 9 SCC 368]' as discussed above, there has to be grave suspicion and not mere suspicion for prima-facie making a case for framing of charge. From the perusal of entire chagesheet, evidence of complainant could not be corroborated by other evidence. I have also seen order of discharging of co-accused persons Deepak and Sanjay Pratap Singh by learned CMM, New Delhi, wherein it was observed that there is no new evidence against both the co- accused persons except the disclosure statement of other co- accused persons which is not admissible in the eyes of law. In the said order discharging the co-accused, learned CMM further observed that investigating agency concluded that there is no evidence to connect the co-accused Deepak and Sanjay Pratap Singh with the concerned offence. Learned CMM further recorded that IO submitted that there was no phone call or call details by the complainant to the petitioner. It was also observed by learned CMM that as per report of the IO, the allegations made in the complaint in the FIR were materially incorrect and could not be corroborated by the 10 and therefore, 10 filed closure report against the co-accused persons on the basis of same complaint, which was accepted by learned CMM stating that there is no reason or material to differ from the conclusion of the IO.

21. Keeping in view the facts and circumstances of the case as discussed above, I am of the opinion that the impugned order against accused Brijesh Singh is not a speaking order and is not passed upon considering the evidence collected by the investigating agency and therefore, it suffers from infirmity and illegality. Impugned order with respect to Brijesh Singh is therefore, set aside. Accused/ petitioner Brijesh Singh is discharged of the offences for which he has been charged with in the case FIR No. 69/07, PS Special Cell Accused/petitioner is on bail. His bail bond is cancelled and surety is discharged. Revision petition stands allowed accordingly..."

56. Upon perusal of the aforesaid extracts of the impugned order, it is made out that the same pertains to a revision petition filed by the accused/respondent herein, challenging the charges framed against him under Sections 419, 420, 467, 468, 471, 474, 384, 120-B, and 34 of the IPC.

57. At this stage, this Court deems it appropriate to address each charge individually.

58. The order of the learned ASJ meticulously examines the material available and highlights significant inconsistencies in the prosecution's version.

59. The learned ASJ observed that the complainant did not file an immediate report after receiving the alleged threatening call, nor did he approach the local police or emergency services in Delhi or Varanasi. Instead, he decided to file the complaint two days later before the Joint Commissioner of Police, Special Cell, New Delhi, bypassing the regular procedure, which raises doubts regarding the authenticity of the allegations.

60. Furthermore, the prosecution failed to establish the identity of the accused as the caller of the alleged extortion call by failing to obtain conclusive CDR or witness testimony linking the accused to the alleged call. The investigative agency could not trace the PCO from which the call was allegedly made, nor was any independent witness examined to corroborate the complainant's claims. Additionally, it was observed that the complainant made several calls after the alleged threat but did not report the matter to the police at the earliest opportunity, further undermining the credibility of the allegations.

61. In the present case, the learned ASJ has rightly observed that the absence of supporting evidence, such as forensic analysis of the call, the complainant's conduct in delaying the complaint, and the lack of identification of the alleged PCO, create serious doubts regarding the veracity of the prosecution's case.

62. The complainant's allegations are primarily based on an alleged telephone call demanding money. However, as noted in the impugned order, no documentary or independent evidence has been adduced to demonstrate that any money was actually delivered to the accused as a consequence of such inducement. Furthermore, the prosecution failed to provide any financial records, transaction details, or corroborative statements to substantiate the claim that the complainant parted with any property due to fraudulent misrepresentation.

63. In the present case, the absence of credible evidence to establish dishonest inducement and the absence of any actual financial loss to the complainant indicate that the allegations are not substantiated and thus, the learned ASJ has correctly observed that the prosecution has failed to link the accused to any act that would fulfill the criteria of cheating as defined under Section 415 of the IPC.

64. Now advertng to the charge framed under Section 467 of the IPC. Section 467 of the IPC pertains to the forgery of valuable security, will, or any document that purports to confer authority to receive money or valuable property.

65. In order to constitute an offence under the said provision, the prosecution must establish that the accused forged a document intending for it to be used as genuine to cause wrongful gain or wrongful loss. However, the learned ASJ, in the impugned order, has rightly observed that none of the alleged forged documents were either prepared or used within the territorial jurisdiction of Delhi.

66. Further, the prosecution itself admits that the forged documents were recovered from the accused in the state of Odisha at the time of his arrest. Additionally, there is no evidence to show that these documents were intended to be used within Delhi or that they were instrumental in the alleged extortion attempt. As such, the absence of territorial jurisdiction is a significant factor that renders the charge under Section 467 of the IPC unsustainable.

67. Coming to the charge framed under Section 468 of the IPC, the said provision deals with forgery committed with the intent to cheat.

68. In the matter at hand, this Court, upon perusal of the material available on record, has observed that the prosecution has failed to establish that the accused, by using the allegedly forged documents, deceived any individual or entity within the jurisdiction of Delhi. In the absence of any proof of fraudulent use of the documents within the jurisdiction, this Court is of the view that the learned ASJ has correctly held that the charge under Section 468 of the IPC cannot be sustained against the respondent in light of the specific allegations made in the present complaint.

69. Moving further, Section 471 of the IPC pertains to using a forged document, knowing it to be forged. The prosecution's case rests primarily on the recovery of the alleged documents from the accused at the time of his arrest in Odisha. However, there is no material on record to demonstrate that the accused used these documents within the jurisdiction of Delhi to cause wrongful gain or loss. The prosecution has not produced any witness or transactional evidence to substantiate the claim that the accused knowingly used forged documents to defraud any person within Delhi.

70. While discussing as to what constitutes an offence under Section 471 of the IPC, the Hon ble Supreme Court in Mohd. Ibrahim v. State of Bihar⁶, held that mere possession of forged documents does not amount to the offence under Section 471 of the IPC unless there is evidence to show their actual use with fraudulent intent.

71. The learned ASJ has observed that a separate case regarding the same forged documents was already registered in Odisha, and the accused is facing trial before the competent jurisdiction. It is settled that the principle of double jeopardy, enshrined under Article 20(2) of the Constitution of India prohibits prosecuting an accused for the same offence in multiple jurisdictions. Therefore, continuing the proceedings in Delhi for the same alleged act would be contrary to settled legal principles.

72. Moving to the offence under Section 506 of the IPC. Upon bare reading of the said provision, it is observed that in order to sustain a charge under this provision, the prosecution must establish the following:

- a. The issuance of a threat by the accused. b. An intention to cause alarm to the complainant. c. A reasonable apprehension in the mind of the complainant that the threat would be carried out

73. Upon scrutiny of the material on record, this Court finds that the prosecution has failed to substantiate the essential elements required to frame a charge under Section 506 of the IPC. The learned ASJ in the impugned order has rightly observed that there is a lack of credible evidence to link the accused to the alleged intimidation.

(2009) 8 SCC 751

74. The prosecution primarily relies on the complainant's statement that he received a threat call on 28th August, 2007, yet no corroborative evidence such as call recordings, voice analysis, or independent witness testimony has been presented to substantiate the claim.

75. It is further noted that the complainant did not take immediate action by approaching the police or emergency services after receiving the alleged threats. Instead, the complaint was filed after a considerable delay, which raises questions regarding the credibility and genuineness of the allegations. The learned ASJ has also considered the fact that the prosecution failed to establish the identity of the accused as the originator of the alleged threats.

76. The record reveals that the investigating agency was unable to trace the source of the call, nor was the alleged PCO owner, from where the call was purportedly made, examined to confirm the complainant's allegations.

77. It is pertinent to mention here that the Hon ble Supreme Court, in Manik Taneja v. State of Karnataka⁷, has held that vague and unsubstantiated threats, without credible evidence to prove the accused's intention to instill genuine fear, do not constitute an offence under Section 506 of the IPC.

78. Similarly, in Gulab Chand Upadhyay v. State of U.P.⁸, it was observed that mere expression of words without an overt act showing the capability to carry out the threat does not attract the offence of criminal intimidation.

(2015) 7 SCC 423 (2002) 2 SCC 56

79. This Court observes that the learned ASJ has addressed the offences of forgery and cheating, thereby, noting that the alleged forged documents were recovered from the accused during his arrest in Odisha and had no connection with the extortion allegations originating in Delhi in terms of the present FIR.

80. Further, in the impugned order, the learned ASJ has noted that a case under forgery and impersonation was already registered in Odisha, where the trial for the same was pending. It noted that charging the petitioner for the same offence in Delhi would violate Article 20 of the Constitution which prohibits double jeopardy. Furthermore, the learned Court below observed that the Delhi Court lacks territorial jurisdiction over the offences committed in the territory of Odisha, and this Court finds that there is no illegality in the said observation.

81. While discussing the charges pertaining to the allegations of extortion under Section 384 of the IPC, the learned ASJ has meticulously scrutinized the evidence and timeline presented before it by the parties in order to arrive at the conclusion that the order dated 10th April, 2015, where the learned Trial Court ordered for framing of charge against the accused/respondent for offences under Sections 387/419/420/467/468/471/474/120B/34 of the IPC and order dated 1st October, 2015 by virtue of which the charges were framed against the accused are bad in law leading to discharge of the accused.

82. Now adverting to the issue before this Court, i.e., whether the learned ASJ erred in discharging the accused.

83. It is observed by this Court that the complainant, who is a resident of Varanasi, allegedly received a threat call demanding Rs. 50 Lakhs as „protection money on 28th August, 2007 from the accused herein and Mr. Tribhuvan Singh (co-accused).

84. However, this Court cannot ignore the admitted position of fact that the complainant did not make any efforts to report the call immediately to the local police, either in Delhi or in Varanasi and instead the complainant proceeded to file a complaint in Delhi two days later before the Joint Commissioner of Police, Special Cell. This Court finds that this delay and choice of jurisdiction is unusual which raises serious doubts about the complaint's credibility.

85. This Court also notes that during the investigation, no evidence was found to link the accused to the extortion call and the same is apparent from the bare reading of the material placed on record including the chargesheet dated 8th October, 2007.

86. It is observed that the alleged PCO, from where the call originated could not be located, and the person named Mr. Riyaz, purportedly associated with the PCO, was neither prosecuted nor made a witness.

87. Additionally, the prosecution has clearly failed to obtain and place on record the call detail records or voice analysis as evidence to establish the respondent's involvement which fact has also been noted by the learned ASJ in the impugned order.

88. It will not be out of place to mention that despite the allegation of a threat call, no property or valuable security was delivered by the complainant, which is one of the essential ingredients to constitute the offence of extortion, thereby, undermining the allegation of extortion made against the respondent.

89. This Court has also gone through the case history, including the Hon'ble Supreme Court's observations in the Criminal Appeal no. 1750/2017 involving the accused herein. It had been determined by the Hon'ble Supreme Court that there was no organized criminal activity within Delhi, and the complaint appeared to have been filed in Delhi solely to invoke MCOCA. This earlier finding, coupled with the lack of evidence connecting the respondent to the extortion allegations was taken into consideration by the learned ASJ while concluding that there was insufficient material to frame charges against him.

90. It is further observed that co-accused persons namely Mr. Deepak and Mr. Sanjay, were discharged for lack of evidence, and no new evidence was brought against the respondent herein beyond their disclosure statements, which are inadmissible in the present case. Therefore, the learned ASJ rightly held that there cannot be different standards of evidence for the co-accused persons and the respondent herein in the same case.

91. This Court is of the view that the learned ASJ correctly observed that the offences of forgery and impersonation were distinct and unrelated to the extortion allegations.

92. It has been rightly observed in the impugned order that the forged documents, recovered in Odisha, bore no connection to the alleged extortion call made to the complainant. With regard to the same, this Court is of the considered view that the prosecution's attempt to link these two separate incidents was speculative and unsupported by evidence. Furthermore, a parallel case involving the forged documents was already pending trial in Odisha, therefore, subjecting the respondent against the forgery offences before the Court in Delhi is clearly not in accordance with the law as the Delhi Court lacked territorial jurisdiction over the alleged offences of forgery and extortion. Thus, it has been rightly held by the learned ASJ that the petitioner could not be tried for the same offence twice, being contrary to the principles enshrined under Article 20(2) of the Constitution.

93. Moreover, the learned ASJ also rightly concluded that the forged documents were recovered in Odisha, and the extortion call was made from a PCO in Varanasi, Uttar Pradesh. No part of the alleged criminal activities occurred in Delhi, except for the complainant filing the complaint there. It is to be noted that the learned ASJ correctly held that filing the complaint in Delhi appears to be a deliberate attempt to invoke MCOCA jurisdiction, a conclusion supported by the Hon'ble Supreme Court in earlier proceedings involving the respondent.

94. This Court is of the considered view that the investigating officer failed to collect crucial evidence, such as Call Detail Records, voice spectrography analysis, or testimony from witnesses who could corroborate the extortion call's origin. Without such evidence, the prosecution's case rested on conjecture rather than substantive proof. Thus, the learned ASJ rightly concluded that mere suspicion, without grave suspicion backed by corroborative evidence, could not justify framing charges.

95. The aforesaid discussions on law and facts shows that the learned ASJ's order in discharging the respondent Mr. Brijesh Singh from the charges is well-founded, both factually and legally and there is no force in the propositions put forth by the petitioner herein.

CONCLUSION

96. This Court is of the view that the learned ASJ has meticulously analyzed the evidence and legal framework in setting aside the charges against the respondent herein. The impugned order is a well-reasoned order wherein the learned ASJ has discussed the entire facts and circumstances, and there is no illegality of any kind thereto.

97. In view of the foregoing discussions on facts and law, this Court does not find any force in the submissions of the petitioner and thus, the impugned order dated 27th February, 2018, qua the discharge of the respondent, passed by the learned ASJ - 02 (FTC), New Delhi District, Patiala House Courts, New Delhi in Crl. Rev no. 103/2017 arising out of the FIR no. 69/2007 registered at Police Station - Special Cell for offences punishable under Sections 387/420/467/468/471/506 of the IPC is, hereby, upheld.

98. Accordingly, the instant petition stands dismissed along with the pending applications, if any.

99. The judgment be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J MARCH 26, 2025 NA/ryp/mk