

THE HIGH COURT OF MADHYA PRADESH
PRINCIPAL SEAT AT JABALPUR

Hon'ble Shri Justice Rajendra Kumar Srivastava

Cr.R. No.5220/2018

Ku. Ekta@Eki Jain & Anr.

Vs

State of M.P.

Cr.R. No.5760/2018

Mukesh Sahu

Vs

State of M.P.

Shri Siddharth Datt with Shri Jubin Prasad, learned counsels for the petitioners.

Shri Samarth Awasthi, learned G.A. for the respondent No.1/State.
None for the respondent No. 2.

ORDER
(22.05.2020)

Since, both the petitions arose from the same order and the relief sought are identical, therefore, the petitions are being heard and decided analogously by this common order.

2. The revision petitions under Section 397/401 Cr.P.C. have been preferred by the petitioners being aggrieved by the order dated 25.09.2018 in S.T. No. 150/2018 passed by First Additional Sessions Judge, Begumganj, District Raisen whereby the learned ASJ has framed the charges for the offence punishable under Sections 306 and 384 of IPC against the petitioners.

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3. According to the case, on the basis of *Marg Intimation Report*, the police has registered the FIR against the petitioners for the offence punishable under Sections 306, 384 and 34 of IPC wherein it is mentioned that the deceased namely Kuldeep Raghuwanshi committed suicide by hanging himself. He left a suicidal note mentioning that the petitioners Eki@Ekta Jain and Arpit Jain who are siblings, did not return the ornaments pledged by the deceased in spite of payment of rupees 2 lacs. It is further alleged that they were demanding more money as interest. In furtherance to it, the co-accused/petitioner Mukesh Sahu had forcefully taken the motorcycle of deceased. On inquiry, the police found that due to money transaction between the petitioners and deceased, the petitioners have abetted the deceased to commit suicide and as a consequence thereof, the deceased ended his life.

4. Thereafter, after completing all the investigation, the police has filed the charge-sheet against the petitioners for the offence under Sections 306, 384, 34 of IPC as well as Section 11(Cha) of M.P. Moneylenders Act, 1934 and by passing the impugned order, the learned trial Court has framed the charges under sections 306 and 384 IPC. At this Juncture, it is necessary to be mentioned that earlier, due to typographical mistake, the learned trial Court has mentioned the offence 304 IPC instead of 384 IPC, same has been rectified by the trial Court on 12.10.2018 but in Cr.R No. 5220/2018, the learned counsel for the petitioners failed to bring out necessary correction. On the request of petitioner's counsel and keeping the fact in mind that

the connected petition has been filed with correct particulars, without entering into technicality of the case, I deem fit to proceed further.

5. Learned counsel for the petitioners submits that the order passed by the learned trial Court for framing the charges suffers from grave irregularity as on reading the FIR, no offence is made out against the petitioners. In the present case, no ingredients of abetment are fulfilled to make the offence of Section 306 IPC. He further submits that it is well-settled principle of law that to convict a person under Section 306 IPC, there has to be a clear mens-rea to commit an offence. He submits that in the present case, no intention on the part of the petitioners to lead the deceased to commit suicide is found. He also submits that the offence of section 384 IPC is also not made out in the case as the incident regarding taking the motorcycle of deceased by the petitioner Mukesh Sahu was never reported to the concerned police station. The allegations made against the petitioners are general and frivolous. There is no iota of evidence which shows that the deceased was instigated or abeted by the accused persons for committing suicide. If the allegations made in the FIR, are taken into consideration in *toto*, no offence is made out under section 306 and 384 IPC against all the petitioners. With the aforesaid submissions, he prays for allowing these petitions.

6. On the other hand, learned counsel for the respondent/State opposes the petitions submitting that there is sufficient material available on record for framing the aforesaid charges. The petitioners have abeted the deceased on account of

money transaction. The petitioners were trying to get more money from the deceased in spite of payment. Petitioner Mukesh Sahu had forcefully taken motorcycle of deceased. Hence, the deceased had no option but to commit suicide. Apart from this learned counsel for the respondent/State submits that the deceased entrusted his ornaments to the petitioner/accused Eki @ Ekta Jain and Arpit Jain under pledged and he returned all the amount to these petitioners/accused but these petitioners/accused did not return the pledged ornaments, therefore, it clearly seen that these petitioners/accused has mis-appropriated the ornaments dishonestly. So prima facie case under Section 406 of IPC is also made out against the petitioners/accused Eki@Ekta Jain and Arpit Jain. Therefore, trial Court must be framed the charge against these petitioners/accused under Section 406 of IPC. He also submits that at this stage, these revision petitions may not be allowed, the petitioners may raise all the grounds before the trial Court at appropriate stage of trial.

7. Heard all the parties and perused the case. Before embarking on the facts of the case, it would be necessary to consider the legal aspects first. Since the petitioners have challenged the charge framed by the trial Court, by way of filing these revision petitions, therefore, I would prefer to deal with the provision of Section 227 of Code Of Criminal Procedure, 1973, the same reads as under:

“227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that

there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

8. If the Court finds that sufficient material is available to connect the accused with the offence, then Section 228 of Code Of Criminal Procedure, 1973, comes into role, provision is also quoted as under:

“228. Framing of charge.(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

9. The Hon'ble Supreme Court in the case of **Niranjan Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijja and others (AIR 1990 SC 1962)** has held as under:-

“7. Again in Supdt. & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja, (1979) 4 SCC 274: (AIR 1980 SC 52) this Court observed in paragraph 18 of the Judgment as under:

"The standard of test, proof and judgment which is to be applied finally before finding, the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify the framing of charge against the accused in respect of the commission of that offence".

From the above discussion it seems well-settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face-value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.”

10. Further, in the case of **Union of India Vs. Prafulla Kumar Samal and another (AIR 1979 SC 366)**, the Hon’ble Supreme Court again has held as under:-

“Thus, on a consideration of the authorities mentioned above, the following principles emerge:(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

11. Further, the Hon'ble Apex Court in the case of **State of Orissa Vs. Debendra Nath Padhi, (2005) 1 SCC 568** has held as under:-

“23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material, Satish Mehra case, holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

12. The Hon'ble Apex Court in the case of **State of M.P. Vs. S.B. Johari and others** reported in **2000(2) M.P.L.J (SC) 322**, has also held as under:-

*“4.....It is settled law that at the stage of framing the 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 the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross examination or rebutted by defence evidence, if any, cannot show that accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. In *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijayya and Others etc.* reported in (1990) 4 SCC 76, after considering the provisions of Sections 227 and 228, Cr.P.C., the Court posed a question, whether at the stage of framing the charge, the trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial. The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The Court may peruse the records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof. The Court referred to earlier decisions in *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39, *Union of India v. Prafulla Kumar Samal**

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*(1979) 3 SCC 4 and Supdt. & Remembrancer of Legal
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SCC 274 and held thus:*

“From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose shift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. (emphasis supplied)

13. Therefore, it is manifest that while framing the charges, the Court is required to evaluate the material and documents on record with a view to find out that if the facts emerging therefrom are taken at their face-value, disclose the existence of all the ingredients constituting the alleged offence. The accused has no right to produce any material at this stage and deep merits of the case cannot be considered. The Court should see only the documents annexed with the charge-sheet.

14. Now, it is also necessary to read the relevant provisions of IPC, of which charge is framed against the petitioners. The trial Court has framed the charge of offence under Sections 306 and 384 IPC. Section 306 IPC is reproduced herein under:-

“306. Abetment of suicide.—*If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.*”

15. Further the “Abetment” is defined under Section 107 of I.P.C. which reads as under :-

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“107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.”

16. Section 384 IPC speaks about the punishment of extortion, which reads as under :-

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

17. Further, the extortion is defined in Section 383 IPC, same is also quoted herein under :

383. Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”.

18. Now I would consider first the principle of law regarding offence of Section 306 IPC in the light of landmark pronouncements passed in this regard. In the case **S.S. Chheena Vs. Vijay Kumar Mahajan and another** reported in **(2010) 12 SCC 190**, the Hon'ble Apex Court has held as unde :-

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act

or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

19. Further, The Supreme Court in the case of **Praveen Pradhan vs. State of Uttaranchal**, reported in **(2012) 9 SCC 734** has held as under :-

“17. The offence of abetment by instigation depends upon the intention of the person who abets and not upon the act which is done by the person who has abetted. The abetment may be by instigation, conspiracy or intentional aid as provided under Section 107 IPC. However, the words uttered in a fit of anger or omission without any intention cannot be termed as instigation.....

18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. More so, while dealing with an application for quashing of the proceedings, a court cannot form a firm opinion, rather a tentative view that would evoke the presumption referred to under Section 228 CrPC.”

20. The Supreme Court in the case of **M. Mohan vs. State represented by the Deputy Superintendent of Police**, reported in **(2011) 3 SCC 626** has held as under :-

“44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in

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order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

21. Therefore, it is clear that a person can be said to have instigated another person, when he actively suggests or stimulates him by means of language, direct or indirect. Instigation requires an active act or direct act which led the deceased to commit suicide seeing no other option and that act must be done with an intention to push the deceased into such a position that he commit suicide. The offence of abetment by instigation depends upon the intention of the person who abets the deceased. Instigation has to be gathered from the circumstances of a particular case and it is to be determined whether circumstances had been such, which in fact, had created the situation that a person felt totally frustrated and committed suicide.

22. In the present case, it reveals that the case is based upon the suicidal note recovered from the deceased. The allegations against the petitioners Eki Jain and Arpit Jain are that they were coercing the deceased by demanding money in spite of payment made by him on the pretext of his pledged ornaments. The petitioner/Mukesh Sahu had also taken his motorcycle forcefully due to non payment of loan. The contents of suicidal note is quoted as under:-

“मैं जैसी नगर वालो की लड़की ऐकी जैन (अर्पित) से पीड़ित हु, और वह थाने की धमकी देती है जिसको मैं 200000/- रु दे चुका हु। और अभी भी और पैसे मांग रही है और उसके पास मेरे गहने झुमकी, चार चूड़ी और एक कड़ोड़ा

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रखा हुआ है जो की सब सोने का है। मेरे मरने के बाद वो सब मेरी पत्नी को दिला दे यह मैं टी.आई. शर्मा जी से निवेदन करता हु और मेरी गाड़ी मुकेश साहु ने छुड़ा ली है जिसको भी आप दिला देना।

माता जी की चोरी मैंने नहीं की थी मेरा झुठा नाम लगा था

धन्यवाद
कुलदीप रघुवंशी

23. Further, on perusal of statements of witnesses, *prima facie*, it is confirmed that the deceased pledged some ornaments of his wife and got rupees two lacks from the petitioners Ekta Jain and Arpit Jain. The deceased had returned the amount but on the point of interest, there was some dispute between them and in this context, they were not returning the pledged ornament rather the petitioner Mukesh Sahu had forcefully taken the motorcycle of the deceased which was seized from his possession. There is also some dispute of repayment of money between the deceased and Mukesh Sahu. Further, the police has also seized some documents from the possession of accused Ekta Jain, Arpit Jain as well as family members of deceased in which the transaction details are mentioned. Hence it *prima facie* shows that the deceased had taken a loan from the petitioner/accused and they were pressurizing the deceased for returning the interest amount, which may be caused severe mental stress to the deceased which resulted into suicide by hanging. However, it is clear that the petitioners had no intention of instigating or goading deceased to commit suicide for extracting the interest amount. The act of petitioners would not sufficient to lead to suicide of deceased. Mere failure to fulfill the promise of returning the ornaments after getting principle amount, does not constitute the

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offence of Section 306 r/w 107 IPC, there should be some mens-rea on the part of petitioners to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

24. In almost similar circumstances, the bench of this High Court in the case of **Ramesh Banshkar @ Manju Banshkar Vs. The State of M.P.** passed in **Cr.R. No. 1677/2015** dated 26.11.2015, observed as under:-

“19. In the case at hand, it has been established prima facie that the deceased had taken loan from the revisionist/accused and he was pressurizing and threatening the deceased for returning the amount, which caused severe mental stress to the deceased and his wife. As a result of which, they committed suicide by hanging. However, it is clear that the applicant had no intention of instigating or goading deceased to commit suicide, for the simple reason that with the suicide of the deceased, his chances of extracting further amount would practically vanish, inspite of the threat issued by him to recover the same by selling the house of the deceased. The revisionist could not have conceivably foreseen that a demand or even coercion practiced by him upon the deceased, would lead to suicide of the deceased.

20. Even if it is presumed to be true that the revisionist was behaving like a loan-shark, it cannot be said that the deceased was bereft of any options. He could simply refuse to pay the loan amount and could have lodged an FIR against the revisionist if he felt aggrieved by his conduct. Even if the circumstances allegedly created by revisionist are held to be true. It cannot be said that he had created such a situation for the deceased that he was left with no option but to commit suicide. The applicant had no reason to conceive nexus between his action and the result that eventually ensued.

21. Thus, there is no sufficient ground for proceeding against the revisionist/accused under Section 306 of the IPC and the charge framed against him is not sustainable in the eyes of law. As such, he is entitled to be discharged in respect of aforesaid offence”

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25. Likewise, in the case of **Manish Kumar Sharma Vs. State of Rajasthan** reported in **1995 Cr.L.J. 3066**, The Rajasthan High Court held that where persistent demand for the refund of an amount advanced by the accused to the deceased was not taken as sufficient to bring the instance /demand of the accused in the realm of abetment so as to frame a charge under Section 306 of IPC, relevant para No. 17 to 19 are quoted as under:-

“17. As already stated, abetment would imply an intentional abetment. There can be no abetment if the mens rea is missing.

18. In the present case, it is extremely doubtful if all the circumstances taken cumulatively could indicate any mens rea on the part of the accused-petitioner. It is an admitted position that Smt. Kusum Devi was not in a position to repay the amount borrowed from the accused-petitioner and he had been demanding this money very often. Hence, if he made the casual remarks attributed to him as reproduced earlier, it cannot be said that he wanted or intended Smt. Kusum Devi to commit suicide. There is no evidence to suggest or indicate that the petitioner knew or had reason to believe that Smt. Kusum Devi had purchased tablets of salphos and would contemplate or commit suicide.

19. Demanding a sum of money given on loan is not an offence under any provision of the criminal law.....”

26. Likewise, in the case of **Mahesh Vs. State of M.P. , 2002(3) MPHT 359**, this High Court held that even if death note mention about taking a loan by the accused from deceased for getting a plot allotted by the development authority and deceased was harassed when accused refused to give the plot dishonestly where after the deceased committed suicide, would not fulfilled ingredients of abetment as no other positive act attributed to the accused was alleged to justify framing of the charge under Section 306 of IPC.

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27. Therefore, the charge of Section 306 of IPC is not made out against all the petitioners.

28. Now I deal with the facts of the case to ascertain whether the charge of offence under Section 384 IPC framed by the trial Court, against the petitioners, is correct or not ? In the present case, the trial Court has framed the aforesaid charge on account of threatening the deceased by the petitioners to obtain 80,000/- rupees.

29. In the case of **R.S. Nayak v. A.R. Antulay** reported in **(1986) 2 SCC 716**, the Hon'ble Apex Court explained the offence of Section 383 IPC and held as under:-

*.....The main ingredients of the offence are:
(I)the accused must put any person in fear of injury to that person or any other person;
(ii)the putting of a person in such fear must be intentional;
(iii)the accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security; and
(iv) such inducement must be done dishonestly. Before a person can be said to put any person in fear of any injury to that person, it must appear that he has held out some threat to do or omit to do what he is legally bound to do in future. If all that a man does is to promise to do a thing which he is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion. We agree with this view which has been indicated in *Habibul Razak v. King-Emperor* [AIR 1924 All 197 : 25 Cri LJ 961 : 21 ALJ 850] . There is no evidence at all in this case that the managements of the sugar cooperatives had been put in any fear and the contributions had been paid in response to threats. Merely because the respondent was Chief Minister at the relevant time and the sugar cooperatives had some of their grievances pending consideration before the Government and pressure was brought about to make the donations promising consideration of such grievances, possibly by way of reciprocity, we do not think the appellant is justified in his contention that the ingredients of the offence of extortion have been made out. The evidence led by the prosecution falls short of the requirements of law in*

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regard to the alleged offence of extortion. We see, therefore, no justification in the claim of Mr Jethmalani that a charge for the offence of extortion should have been framed.

30. Therefore, it is manifest that to constitute the offence of extortion, there must be intentionally putting a person in fear of injury by himself or another. The element of dishonesty is the essence of the offence of extortion. Further, in the case of **Most. Indrasana Kuer Vs. Sia Ram Pandey** reported in **1970 Cri LJ 647**, the High Court of Patna has observed as under :-

*“5. so 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 a 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 putting him 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 Code make this perfectly clear. In this connection, reference can be made to a decision of this Court in *Jadunandan Singh v. Emperor*, AIR 1941 Pat 129. In that case also, the victims were assaulted and their thumb impressions were forcibly taken. In view of the facts, quoting the following observation in a division bench decision of this Court in *Ramyad Singh v. Emperor*, Criminal Revn. 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.”

31. In the present case, on perusal of statements of witnesses as well suicidal note of the deceased, it is found that the petitioner Mukesh was the person who had taken the motor cycle of deceased

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due to non payment of loan amount. It is also found that some dispute regarding repayment of money was also in existence between the deceased and Mukesh Sahu in addition to repayment of loan provided by petitioners Eki Jain and Arpit Jain. I do not find sufficient material which shows that the petitioners Eki Jain and Arpit Jain have put the deceased in fear of injury and forcefully taken his motorcycle, hence charge of Section 384 of IPC be not made out against the petitioners Eki Jain and Arpit Jain. But *prima facie* it appears that the motor cycle had been forcibly taken by the petitioner Mukesh Sahu and truthfulness of this fact can only be examined in trial that under what circumstances the petitioner did so. The allegations are *prima facie* sufficient to frame the charges of Section 384 of IPC against the petitioner Mukesh Sahu.

32. Therefore, the revision petition No. Cr.R. 5220/18 filed by the petitioners Eki Jain and Arpit Jain is **allowed**. Consequently, the petitioners Eki Jain and Arpit Jain are hereby discharged from the offence of Section 306 and 384 IPC. The another revision petition No. 5760/18, filed by the petitioner Mukesh Sahu is partly allowed and he is discharged from the charge of Section 306 IPC. The trial shall be continued for the offence of Section 384 IPC in respect of the petitioner-Mukesh. The argument of respondent/State regarding framing the charges under Section 406 of IPC against the petitioners/accused Eki Jain and Arpit Jain would be considered by the trial Court in accordance with the law if the prosecution takes any legal remedy in this regard or in *suo moto* proceeding by the Court. It

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is made clear that the learned trial Court is free to consider the arguments of respondent/State on his own discretion in accordance with law without being influence by any findings in this Court.

33. C.C. as per rules.

(Rajendra Kumar Srivastava)
Judge

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