



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 8580/2022

----Petitioner

Versus

State Of Rajasthan, Through Pp



----Respondents

For Petitioner(s) : Mr. Gopal Singh Bhati
For Respondent(s) : Mr. Vikram Rajpurohit, PP

HON'BLE MR. JUSTICE ARUN MONGA

Order (Oral)

30/08/2024

1. Rather too peculiar are the facts of the case in hand. A minor girl, all of 15 years, is an accused in the FIR, thus being prosecuted by State, at the instance of the complainant who too is a minor girl aged 17 years. More of it later. Quashing of an FIR No.722/2022 dated 28.11.2022 registered under Sections 34 and 386 of IPC (punishable with maximum sentence up to 10 years) at Police Station Ambamata, District Udaipur has been sought herein.

2. ***** / respondent No.2 lodged a police complaint against (the petitioner) and one . She reported that she met via Instagram, who later invited her to her house under the pretense of showing and selling a cosmetic cream to her. Instead of providing the cream, took her to

a cafe where ***** also joined them. The two allegedly coerced the complainant into accepting a cigarette and then took a photo of her while holding the cigarette. They then blackmailed her for money, which she initially provided. When she refused further demands, on November 27, 2022, ***** and ***** reportedly assaulted her, threatened her and her father. It was thus that ***** filed a report with the police the next day, leading to an FIR against ***** for extortion and related charges.



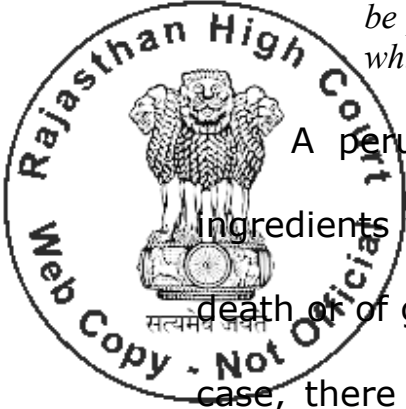
3. In the aforesaid backdrop, I have heard the learned counsel for the petitioner as well as learned Public Prosecutor and have perused the case file.

4. Learned counsel for the petitioner would strenuously argue that the FIR is based on false and fabricated statements. Even if the allegations were taken at face value, they do not constitute a criminal offence. He asserts that the police complaint in reality revolves around a dispute over payment for a cosmetic cream which was sold by petitioner to respondent No.2 / complainant. The complainant, who had ordered a cream worth Rs. 3000/-, took the same without paying for it and till date has not settled the over due amount payable by her. Learned counsel states that the petitioner is a 15-year-old student who has been wrongfully implicated with malicious intent.

5. Learned Public Prosecutor argues that no interference is warranted by this Court as law will take its own course once the FIR was registered. He submits that in case no offence is found to have been committed by the petitioner, a negative report will be filed in her favour and thus, seeks dismissal of the petition.

6. First and foremost, it appears to be a case of completely misplaced and wrong invocation of Section 386 of IPC while registering the FIR. For ready reference Section 386 is reproduced hereinbelow:-

“386. Extortion by putting a person in fear of death or grievous hurt.- Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”



A perusal of the above clearly reflects that the essential ingredients which are *sine qua non* are putting a person in fear of death or of grievous hurt so as to commit extortion. In the present case, there is not even a whisper by the complainant, worth its salt, while making the allegations against the petitioner that the complainant was either put in fear of death or in grievous hurt. Clearly, therefore, the essential ingredients are lacking and the FIR *ex facie* does not disclose commission of any offence under Section 386 by the petitioner. At best, if at all, the purported offence, though, of course, on the basis of false allegations, as it appears, would fall under Section 385 of IPC. Said Section 385 envisages that, whoever in order to commit extortion puts any person in fear of any injury, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

7. In the context of Section 385 of IPC, conceded factual position is that not only the complainant is a minor girl aged 17 years, but even the accused i.e. the petitioner herein, is stated to be only 15 years. It is rather unfathomable as to how at the first instance, FIR came to be registered without even verifying the

preliminary basic facts. Both the complainant and the petitioner accused being juvenile, the FIR in question is a complete abuse and misuse of police powers and is accordingly not sustainable.

8. In this context, reference may be had to Rule 8 (1) of the Juvenile (Care and Protection of Children) Model Rules, 2016 framed under The Juvenile Justice (Care and Protection of Children) Act, 2015. The same being relevant, is reproduced hereinbelow:-



“PROCEDURE IN RELATION TO CHILDREN IN CONFLICT WITH LAW & Pre-Production action of Police and other Agencies. (1) No First Information Report shall be registered except where a heinous offence is alleged to have been committed by the child, or when such offence is alleged to have been committed jointly with adults. In all other matters, the Special Juvenile Police Unit or the Child Welfare Police Officer shall record the information regarding the offence alleged to have been committed by the child in the general daily diary followed by a social background report of the child in Form 1 and circumstances under which the child was apprehended, wherever applicable, and forward it to the Board before the first hearing:

Provided that the power to apprehend shall only be exercised with regard to heinous offences, unless it is in the best interest of the child. For all other cases involving petty and serious offences and cases where apprehending the child is not necessary in the interest of the child, the police or Special Juvenile Police Unit or Child Welfare Police Officer shall forward the information regarding the nature of offence alleged to be committed by the child along with his social background report in Form 1 to the Board and intimate the parents or guardian of the child as to when the child is to be produced for hearing before the Board.”

(Emphasis supplied).

Plain reading of above mandates that in cases involving children, an FIR can thus only be registered if the alleged offence committed by the child is classified as heinous and carries a punishment of seven years or more. For petty or serious offences, no FIR can be registered unless the offence is alleged to have been committed in conjunction with adults.

9. Moreover, even in cases, when a child is apprehended for a crime punishable by a sentence of less than seven years, in such instances also, only a daily diary (DD) entry is to be made. If warranted, the child can then be produced before the Juvenile Justice Board (JJB). The police officials are required to prepare and submit a social background report on the child, a report detailing the circumstances of the alleged offence, information on the recovery of any stolen property, and proof of the child's age, along with other relevant documents.



10. As an upshot, petition is allowed. FIR No.722/2022 dated 28.11.2022 registered under Sections 34 and 386 of IPC at Police Station Ambamata, District Udaipur along with all consequential proceedings qua the petitioner are quashed.

11. Pending application, if any, stands disposed of.

(ARUN MONGA),J

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Whether fit for reporting: Yes