

**IN THE HONOURABLE COURT OF SESSIONS AT BAMBI THANE
(UNDER SECTION 177, 193 OF THE CRIMINAL PROCEDURE CODE)**

S.C. No. 123 OF 2014

STATE OF BAMBI

..... COMPLAINANT

VERSUS

MR. PANNA

..... ACCUSED NO.1

MR. SABA

..... ACCUSED NO.2

MR. JAIMIL

..... ACCUSED NO.3

WRITTEN SUBMISSION ON BEHALF OF THE COMPLAINANT

COUNSEL FOR COMPLAINANT

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INDEX OF AUTHORITIES

List Of Symbols And Abbreviations:

1.	AC	Law Report, Appeal Cases
2.	AIR	All India Reporter
3.	BPC	Barata Penal Code
4.	CrPC	Criminal Procedure Code
5.	IPC	Indian Penal Code
6.	SCC	Supreme Court Cases
7.	SCR	Supreme Court Reporter

Books, Commentaries & Treaties Referred:

1. KD Gaur, Criminal Law: Cases and Materials, 5th edition 2008, LexisNexis
2. Ratanlal and Dhirajlal's The Indian Penal Code, 33rd edition 2012, Wadhwa, Nagpur
3. Sarkar on Criminal Major Acts, 6th edition 1998, Orient Law House, New Delhi
4. The Civil Court Manual, 12th edition, vol. 3, 1987, The madras law journal office, Madras
5. Batuk Lal, The law of evidence, 18th edition, 2010, Central Law Agency, Allahabad

Statutes And International Conventions Referred:

1. The Indian Penal Code, 1860
2. The Indian Evidence Act, 1872
3. Cinematograph certification rules 1983
4. The Code Of Criminal Procedure, 1973
5. The Indian Contract Act, 1872
6. Sale of Goods Act, 1930
7. Model Prison Manual for the Superintendence and Management of Prisons in India

Dictionaries & Law Lexicons Referred:

1. Wharton's Pocket Law Dictionary, 15th edition (Pocket) 2010, Universal law Publishing Company, New Delhi.
2. K.J. Aiyer's Law Dictionary, 8th edition 1980, Law Book Company, Allahabad.
3. Dr. Babel's Law Dictionary, 1st edition 2001, Central Law Agency, Allahabad.

List of Cases Cited:

1.	State (Delhi Administration) v. V.C. Shukla ,	AIR 1980 SC 1382
2.	Kehar Singh & Ors vs State (Delhi Admn.)	AIR 1998 SCC 1883
3.	State Of Himachal Pradesh v. Krishan Lal Pardhan And Ors	AIR 1987 SC 773
4.	Chellappan Pillai v. Karanjia	1962 2 Cr LJ 142
5.	Cassidy v. Daily Mirror Newspapers Ltd	(1929) 2 K.B. 331
6.	V.S Achutanandan v. State of Kerala	(2007(1)8C C 61)
7.	E.P.Jayarajan v. G.Surendran	IN THE HIGH COURT OF KERALA AT ERNAKULAM CrI.MC.No. 866 of 2009
8.	J.N. Bagga And Ors. V. All India Reporter Ltd	AIR 1969 Bom 302
9.	Queen-Empress v. Taki Husain	(1885) ILR 7 All 205
10.	Mantri Mattapalli Naarsimha Rao	AIR 1919 Mad 954

STATEMENT OF JURISDICTION

The complainant has invoked the jurisdiction of this honourable court under:

1. Section 177 of CrPC which is as under:

Ordinary place of inquiry and trial:-

Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

2. Section 193 of Crpc which is as under:

Cognizance of offences by Courts of Session:-

Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.

STATEMENT OF FACTS

1. Mr.Panna was charged under TADA for possessing arms and was convicted, arrested under Arms Act in March 2013. Before his arrest he was shooting for a film named “HIT FACTORY” directed by Mr. Jaimil and produced by Mr. Saba. The lead actress in this movie was Ms. Naika who had reservations acting with him during his aforesaid trial and later refused to be a part of the movie after his conviction.
2. He was given parole for a month in first year of his imprisonment. After 2 months, he was given parole for a second time for another month citing his wife’s health that needed constant care. During this time, he visited the hospital every day with his daughter and also took her shopping sometimes. On the 8th February 2014 he was with his daughter wearing a colorful outfit at Central Mall where suspiciously Accused No. 2 & 3 along with Ms. Poonam a starlet who had a striking resemblance to Ms. Naika, and was used as her substitute on several occasions were present. Similar events had also occurred on the 6th of February at the Star Hospital where all the accused along with Ms. Poonam and another Smt. Mashal, were present.
3. On 14th February the publicity of the movie “HIT FACTORY” started. On hearing the rumors and seeing the posters, Ms. Naika filed a suit for permanent injunction in the High Court of Bambi against the movie stating that she had acted only in a few scenes in the movie and further that she had completely disassociated from it by returning the advance taken. Also, she received two calls threatening her and her family asking her to withdraw the suit. It was with respect to these calls that Ms. Naika filed a criminal complaint against the three accused. The court has accordingly taken cognizance and filed charges.

STATEMENT OF ISSUES

1. Whether the Accused No. 1, 2 and 3 are liable for Criminal Conspiracy under Section 120 B, r/w 34 of BPC?
2. Whether Accused No. 1, 2 and 3 are liable under section 501 & 502 of BPC?
3. Whether the Accused No. 1 and 2 are guilty of an offence to commit extortion as given under section 385 of BPC?
4. Whether Accused No. 1 has violated condition of remission of punishment under Sec 227 of BPC?

SUMMARY OF ARGUMENTS

Issue No.1: The Accused Nos.1, 2 and 3 had conspired to complete the shooting of the movie. Accused No.1 sought parole citing wife's ill-health and daughter's yearnings, solely with the motive of finishing the movie. The three accused also conspired to defame Ms. Naika and Accused No.2 and 3 have conspired to commit Extortion. From the statements of Ms. Naika and the Police Report filed under Section 173 of the CrPC, it is clearly shown that Accused Nos.1, 2 and 3 were conspiring to complete the movie shooting as soon as Accused No.1, Mr. Panna Boy, was released on parole. It is also evident that Accused No.1 sought parole in collaboration under the pretext of Accused No.1's wife's illness and daughter's yearnings, with the sole motive of completing the movie.

Issue No.2: The essential for an offence under section 501 and 502 are the printing of Defamatory matter and secondly that such matter was with the knowledge or intention to defame. In the present case the said ingredients have been satisfied as there is publication of the defamatory poster in renowned newspapers and magazines. Further, from the acts and omissions of the accused, it is evident that they had knowledge of the fact that such posters were defamatory in nature and having such knowledge published them thus establishing their intent to defame. Further, with regard to the sale of defamatory material, it is evident that there was an agreement between the accused and Mr. Shaikh and further that the said poster were an offered for sale.

Issue No.3: The accused No. 2 and 3 are liable for Extortion under 385 of the BPC. Although the threatening phone calls received by the aggrieved were from public phones, Accused Nos. 2

& 3 are strongly connected to it. Relying on the definition of 'property' in Aiyer's Dicitonary, it is evident that Accused No. 2 and 3 wanted to extort the "goodwill of the actress", by releasing the movie. The release of the movie would have led to injury to her reputation, as she would have been featured alongside a convict.

Issue No.4: The essential for an offence under section 227 is the remission of the convict and a violation of the conditions of remission. In the present case, the accused was released on 'special leave' which is different from parole as in this case, the day on which the convict is out are treated as suspended and this will amount to a remission. Further, the accused in the present case while on Special leave shot certain defamatory scenes and therefore is liable for defamation which is an offence under the BPC and therefore satisfies the ingredients of Sec.227 of BPC.

ARGUMENT ADVANCED

1. Whether the Accused No. 1, 2 and 3 are liable for Criminal Conspiracy under Section 120 B, r/w 34 of BPC?

It is humbly submitted before the Court that all the three accused are liable for Criminal Conspiracy under Section 120 B, r/w 34.

Section 120 B of the Barata Penal Code states that: **Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.**

(1) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

Section 120 B flows from Section 120 A of the BPC, which states:

When two or more persons agree to do, or cause to be done,-

(1) An illegal act, or

(2) An act which is not illegal by illegal means, such as agreement is designated criminal conspiracy.

As regards the first ingredient of Section 120 A, it is submitted that all the accused are engaged in illegal acts of Defamation (Section 501, 502) and accused No.2 and 3 in Extortion (385) of the BPC.

The Supreme Court held that “It is true that in most cases it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to conclusive or irresistible inference of an agreement between two or more persons to commit an offence.¹”

In context to the charge of Criminal Conspiracy, it is necessary that meeting of minds exists. It is submitted that from the various facts of this case, such meeting of minds among the accused in this case is evident. It has been held² that “entering into an agreement by two or more persons to do an illegal act or legal act by illegal means is the very quintessence the offence of conspiracy”. Accused no.1, Mr. Panna Boy, was granted parole for a month on 03 February 2014. Prior to his release on parole, accused nos. 2 & 3 (Mr. Saba & Mr. Jaimil respectively) visited actress Ms. Naika on 05 Feb. 2014 to ask her to work in the movie. This is evident from the Statements of Ms. Naika and the Police Report filed under Section 173 of the CrPC. This clearly shows that Accused No.1, 2 and 3 were conspiring to complete the movie shooting as soon as Accused No.1, Mr. Panna Boy, was released on parole. It is also implied that Accused No.1 sought parole in collaboration under the pretext of Accused No.1’s wife’s illness and daughter’s yearnings, with the sole motive of completing the movie.

¹ *State (Delhi Administration) v. V.C. Shukla*, AIR 1980 SC 1382

² *Kehar Singh & Ors vs State (Delhi Admn.)* AIR 1998 SCC 1883

The Star Hospital was also booked for shooting, from 5 to 10 Feb. 2014. Shooting had taken place in the Hospital, under the pretext of Accused No. 1 visiting his ailing wife, as per the design which existed in the minds of the accused. DW 4 Ms. Mashaal and DW 5 Ms. Poonam were in the Hospital. While Accused No.1 Mr. Panna always used to carry his daughter around with him, he sent her out with the care taker/nanny when he went to meet DW 4. Also, the CCTV footage has confirmed the presence of DW 3 Mr. Saba in the hospital.

Accused No.3 Jaimil was admitted to the same hospital on 6 Feb., complaining of chest pain. Though he was not in a serious condition, it is being brought to the attention of the Court that he was advised two weeks' complete rest by the Doctor. In spite of such an advice, he was seen in the Central Mall with Accused No.1 and Ms. Poonam on 08 Feb. 2014, shooting. It also has to be noted that Mr. Panna Boy was seen earlier in a white kurta-pyjama at the Hospital Gate, and as is corroborated by the testimony of PW 3 Ms. Kushboo.

Later in the Mall, he had changed into a colourful retro outfit. This change of clothes is evident from the CCTV footage as inspected by the Investigation officer, and is also corroborated by the testimony of Ms. Kushboo. Also, in the mall, his daughter had questioned him when he had changed his clothes, and she also remarked that his outfit's design looked old and out of fashion. The cinematographer Mr. Ganesh has also suggested that the colourful outfit used could be for the continuance of the previous scene. There is nothing on record to suggest as to why the Accused No.1 has changed his outfit. Also, he asked his daughter to go away with her nanny, shortly after which DW 2 and DW 4 entered the Mall for the shoot. The Mall Superintendent has confirmed shooting in the Mall and presence of Accused No. 1 and DW 4 Ms. Poonam. CCTV footage of the Mall have captured all three accused; Ms. Poonam and also Ms. Khusboo.

In the course of her questioning by the Investigation officer, DW 4- Ms. Poonam has admitted

that was shooting with Accused No.1 and also some scenes with Accused No.1 (Mr. Panna Boy) and DW 5 (Smt.Mashaalji).

The PW 5, cinematographer Mr. Ganesh has admitted of shooting Accused No.1, Ms. Poonam and Smt. Mashaal ji. He also stated that in the intimate shots of Ms. Poonam and accused No. 1, he was urged by Mr. Jaimil to focus more on the angles where Ms. Poonam resembled PW 4 Ms. Naika. It is submitted that PW 4 had earlier declined to shoot such scenes of an intimate nature. Mr. Saba has expressed that he is now shooting a new TV series. Ms. Poonam also said that she was at Star Hospital shooting for a new TV serial, yet unnamed. The coming together of the three accused; DW 4 and DW 5 is not merely a coincidence, and was solely for the purpose of completion of the “Hit factory” film.

If pursuance to the criminal conspiracy the conspirators commit several offences, then all of them will be liable for the offences even if some of them had not actively participated in the commission of the offences.³

Direct proof of conspiracy being scarce, circumstantial evidence is considered. It is submitted that under the pretext of shooting a TV serial, the three accused have cast DW 4 and DW 5, Ms. Poonam and Smt. Mashaal ji respectively , and with PW 5 Mr. Ganesh as Cinematographer, and conspired complete the remaining portion of the movie “Hit factory”.

Thus, the case being connected by an unbroken chain of circumstantial evidence, which is established by the above mentioned facts, the Accused No. 1, 2 and 3 are liable for defamation under Section 501 and 502?

³ State Of Himachal Pradesh v. Krishan Lal Pardhan And Ors., AIR 1987 SC 773

2. Whether Accused No. 1, 2 and 3 are liable under section 501 & 502 of BPC?

It is submitted that all three accused are liable for Defamation under Section 501 and 502.

Section 501 states Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Ingredients of Sec. 501 are:

1. Printing or engraving of any matter
2. Knowledge or reason to believe that such matter is defamatory.

With respect to the first ingredient, it is a *prima facie* known fact that there has been printing and distribution of posters in various magazines and newspapers which has been marked as annex. 5 .

For the purpose of satisfying the second ingredient, it must be shown that the person who prints such matter had knowledge or reason to believe that it would defame and for the purpose of proving defamation, reference must be made to Sec. 499 which states that:

Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

The ingredients of the aforesaid section are: Making or publishing any imputation concerning any person, Such imputation must be made by visible representation, Such imputation must have been made with the intention of harming or with the knowledge or reason to believe that it will harm the reputation of the person concerning whom it is made.

In the present case, it is *Prima Facie* clear that the first essentials has been satisfied as there has already been printing of poster as stated earlier. Further, with regard to the second condition, it is stated that the poster is a visible representation. The word Visible Representation will include every form of defamation which ingenuity can devise and the printing of poster will definitely fall within this wide category.

In Chellappan Pillai v. Karanjia, it was held that publication of group photograph with a false caption will amount to defamation⁴.

Therefore what remains to be proved is whether imputation made was with the intention to harm or knowledge or reason to believe that it will harm the reputation of the person concerning whom the statement is made. Here, by 'harm' is meant imputation on a man's character made and expressed to others so as to lower him in their estimation. With respect to this the prosecution put forth the following submissions:

It is a well established fact that the aggrieved in this case is a well respected actress from a family of freedom fighters and daughter of an Army Major who is also associated with the counter terrorism implementation task force as its celebrity representative. Upon the conviction of the first accused, she had made it clear to the public in an interview that she did not wish to be associated with the accused any longer as it would tarnish her reputation. The prosecution makes reference to events which transpired on the 14th August 2014 wherein accused No. 2 and 3 had approached the aggrieved asking her to complete the shoot but she refused to do so and also returned the advances that were given to her and asked the accused to leave. On their refusal she had to ask her security to escort them out. Again on 5th February 2014 she was contacted by accused No. 2 and 3 and this time as well she refused. Additionally, in an interview made it

⁴ Chellappan Pillai v. Karanjia, 1962 2 Cr LJ 142

known to the public her intention to disassociate from such a character. By these acts she therefore made an implied communication of her intent to disassociate from the film of the accused. Despite her refusals the Accused No. 2 and 3 used dupe actress to complete the shoot as per the testimonial of PW 5 Mr. Ganesh, Cameraman. Further, the cameraman was also asked by Accused No. 3 to take certain intimate scenes between the Accused No. 1 and DW4 Ms. Poonam which the aggrieved had earlier refused to do and which can be confirmed from the fact that Ms Poonam has been used earlier to do intimate scenes for other actresses.

Therefore, from the conduct of the accused it becomes clear that they had knowledge that the aggrieved did not wish to be associated with the accused No. 1 as it would amount to an act of hypocrisy by her to support an anti terrorist organisation if she be associated with him and also that with the release of the movie the intimate scenes in the movie would ruin her prospects in society. Furthermore, it has been held by the court that “To bring the publication of a scandalous imputation under the Penal law it is not necessary to prove that it was done out of any ill will or malice or that the complainant had actually suffered from it. It would be sufficient to show that the accused intended or knew or had reason to believe that the impaction made by him would harm the reputation of the complainant. Every Sane man is presumed to have intended the consequences which normally follow from his act. The accused a journalist of some standing can very well be presumed to know Or to have reason to believe that the imputation published by him would harm the complainants reputation.⁵”

The same view was first taken the case of **Cassidy v. Daily Mirror Newspapers Ltd**⁶ was

⁵ Supra. 4

⁶ (1929) 2 K.B. 331

reiterated in **V.S Achutanandan v. State of Kerala**⁷ and **E.P.Jayarajan v. G.Surendran**.⁸

It must be observed that accused went out of their way to make it appear as if the aggrieved in the film by using a dupe actress to shoot the intimate scenes and through the posters printed by the accused of the film which are obscene in nature, some depicting the two actors in compromising position and it is also brought to the knowledge of the honourable court that the said posters do not possess the certificate given to this movie as per Rule 38 of the Cinematograph certification rules 1983.

Further it must also be noted that despite knowledge of the fact that it was not the aggrieved present in the intimate scenes of the movie, no such disclaimer can be seen present on the posters.

In conclusion, it can be said that the accused had knowledge that the aggrieved had disassociated herself from the movie to protect her reputation which is evident from the fact that she refused to act and returned advances given to her. Further she had already refused to act in the intimate scenes added later using the dupe actress which shows their intention to further defame the aggrieved. It must also be noted that if Accused No. 2 and 3 wished to complete the film in good faith, they may have filed a suit for specific performance of contract or perhaps made certain amendments to the script since the accused No. 2 was the writer of the script. These facts thus prove their intention to defame.

It is also to be noted that the timeline of the days when the accused No. 1 was released on parole to visit his wife for some odd reasons coincided with the exact dates on which the dupe actress DW 4 Ms. Poonam was present at Star Hospital and the day on which the Accused No. 2 fell ill

⁷ (2007(1)8C C 61)

⁸ IN THE HIGH COURT OF KERALA AT ERNAKULAM CrI.MC.No. 866 of 2009

and was advised two weeks complete rest. Further, it must be noted that despite his illness, the accused on the next day was seen at Central mall preparing to shoot for a movie. Where to, coincidentally Ms. Poonam was present and so was Accused No. 1 who claimed to be shopping with his daughter. It is also stated that whenever all the aforesaid person were present together, the daughter of the accused was asked to be taken care of by a third person that is a nurse at the hospital and a nanny at the mall though the reason he was released was for his yearnings to see his daughter.

Therefore it can be seen that there was collusion between the three accused which may imply that they had knowledge that the aforesaid posters will defame therefore the ingredients laid down in Sec.499 are satisfied thereby satisfying all the ingredients laid down in Sec. 501 which thus stands proved.

Sec. 502 of BPC states that, **Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.**

Therefore what must be proved is whether there was

1. Sale or offer for sale any printed or engraved substance.
2. Knowledge that such substance contains defamatory matter.

From the aforesaid facts and arguments, it becomes clear that there was knowledge that there was substance which contained defamatory matter. What remains to be proved is whether there was sale or offer to sell. For the purpose of proving as to whether there was sale reference must be made to the definition of “sale” as defined under the sale of goods act, 1930 which is as follows: **A contract of sale of goods is a contract whereby the seller transfers or agrees to**

transfer the property in goods to the buyer for a price. Therefore what must be shown to prove sale is that there was an offer and acceptance.

In the present case, the accused 2, had burnt his hands in producing the film and hence was being asked by his creditors to pay his due. During this period, he was approached by one Mr. Sheik, a major financier who asked him to finish the film and hand him the rights to the movie and in return he would take care of his creditors and also give him a decent sum. This act of Mr. Sheik may be said to be an express offer as he has shown his willingness to purchase the film thus satisfying conditions of Sec. 2(a) of the Indian contract Act.

The next question which arises is whether there has been acceptance by the accused No. 2 to the aforesaid offer. It is stated that though *prima facie* it does not appear that there has been express acceptance yet from the fact it can be seen from the series of events that transpired that there was acceptance by performance of conditions and implied acceptance. In this regard, reference is made to Sec. 8 of the Indian Contract Act, which states **“performance of the conditions of a proposal, of the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal”**.

In the present case, it must be observed that as soon as the Accused 2 was given the offer, he met with Accused No. 3 to help him complete the film. Further in the police report, he had stated that he had burnt his hands in producing the movie and was facing difficulty in paying off his creditor, yet he had sufficient income to produce another serial consisting of actors such as DW 4 and PW 4 and as per the statement of Accused No. 3, Accused No. 1 is also present in the said serial. This is in contravention to his statement that he was under to a lot of pressure to pay his creditors as according to recent statistics, the production of a single serial episode costs Rs. 6-7 Lakhs. If the Accused no. 2 was seriously under serious pressure to pay off his debts that such

amounts would not be present with him and it can thereby irrefutably be said that he has already sold the film to Mr. Sheik who has paid off his debts therefore completing the transaction of offer and acceptance along with consideration and this transaction is therefore a sale.

It is further submitted that the release of full page ads in newspapers and magazines is an offer to sell to the general public as well.

The Hon'ble Bombay High Court held that "An "offer for sale" is in the nature of intimation to people that certain articles are meant for sale and they are called upon to give their own proposals for the purpose by the intending purchasers. This terminology is used not only in the common life but also in the judgments delivered by Courts. That is because the word "offer" is used in the sense of a proposal in English Common Law. English Parliament has also adopted that word "offer" in the legislation, and hence in India the word "offer" is otherwise freely used as synonym for proposal in S. 2(a) of the Indian Contract Act.”⁹

Further, with respect to the applicability of Sec. 34 states that “Everyone who composes, dictates, writes or in any way contributes in any way to the making of libel is the maker of the libel”¹⁰. In the present case, all three accused have contributed to the making of the defamatory imputation, as the First Accused is present in the indecent poster, the second accused was responsible for the script and is also a well known director while the third being the producer has provided the financial resources required for publication.

It was stated by Duthoid J. that "If one man repeats a libel, another writes it, and a third approves that is written," Says Russell, quoting Bacon's Abridgment, "they will all be makers of the

⁹ J.N. Bagga And Ors. V. All India Reporter Ltd AIR 1969 Bom 302

¹⁰ Indian Penal Code by Ratanlal and Dhirajlal

libel."¹¹

3. Whether the Accused No. 1 and 2 are guilty of an offence to commit extortion as given under section 385 of BPC?

It is submitted that the accused No. 2 and 3 are liable for Extortion under 385 of the BPC.

Section 385 of the Barata Penal Code says: **Whoever, in order to committing of extortion, puts any person in fear, or attempts to put 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.**

Extortion is defined in Section 383 of the BPC, its ingredients being:

- 1. Intentionally putting a person in fear of injury to himself or another.**
- 2. Dishonestly inducing the person so put in fear to deliver to any person any property of valuable security.**

The victim-complainant and PW 4, received two threatening phone calls in the evening of 16 February 2014, after she filed a suit for permanent injunction on the release of the movie “Hit factory”. It is submitted that the calls were received on the personal mobile number of Ms. Naika, which is known to a very few persons. Although the calls were made from public phones, Accused No.2 and Accused No.3 were strongly connected with the same. Both of them intended to ensure the release of the said movie, and the suit for a permanent injunction on its released, filed by PW 4, created fear in their mind about the future of their project. They had earlier met the actress-PW 4 twice, on 14 August 2013 and on 5 February 2014,

¹¹ Queen-Empress v. Taki Husain, (1885) ILR 7 All 205

urging her to shoot for the movie. They were even ready for a 'discreet' the shoot of a few important scenes, as they wanted to complete the movie without inviting much media and public attention, because they were also casting Accused No.1. Since the PW 4 categorically declined their offer, they completed the movie by casting a look alike.

The term "property", as given in **K.J. Aiyer's Law Dictionary**, includes under the clause 'incorporeal property', the "goodwill of a business". Relying on this definition, it is submitted that the Accused No. 2 and 3 wanted to extort the "goodwill of the actress", by releasing the movie. That PW 4 Ms. Naika has a substantial "goodwill" can be inferred from the fact that she has been the celebrity-representative of Barata to the 'Counter-terrorism Implementation Task Force' (CTITF) of the United Nations, and she also spends all her leisure time to forward its motto. Her goodwill is also derived from her inheritance of patriotism as her father is an Army Major and she belongs to a family of freedom fighters.

For the purpose of Section 385, it is necessary that the accused should have put some person in fear of injury to extort some property from him. 'Injury' includes only such harm as may be caused illegally to a person's mind, body, reputation or property.¹²

If the PW 4 would have cooperated in completing the movie due to fear of injury to her and her family members as caused due to the phone calls, the aforesaid movie "Hit factory" would have been released. Its release would have led to injury to her reputation, as she would have been featured alongside a convict under the Arms Act, and that too for an act which led to death of innocent children and women, and in intimate scenes with him.

¹² In re, Mantri Mattapalli Naarsimha Rao, AIR 1919 Mad 954

4. Whether Accused No. 1 has violated condition of remission of punishment under Sec 227 of BPC?

Sec. 227 of the BPC states: **Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced, if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.**

Therefore it must be proved that firstly, there was a remission of conditional sentence and secondly, that there was violation of such conditions.

With respect to the first ingredient, it is brought to the notice of this honourable court that prior to the completion of 1 year of sentence of the accused; the accused was released on parole citing his wife ill health. This leave was a special leave and since which is permitted under the prison manual that is clause 17.08. **Special leave may be granted to a prisoner in special situations such as: (a) Death or serious illness of father/mother/brother/sister/spouse/children.**

Further, for the purpose of establishing as to whether this leave falls within the ambit of a remission, reference is made to Sec. 432(1) CrPC which states : **When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without Conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.**

It is stated that as the body which is responsible for granting the special leave in this case are the jail authorities which fall with the meaning of executive as they fall within entry 4 of the Second

Schedule of the constitution and thereby the Government. Further, clause 17.13. of the Prisoners act states that **“The period spent on leave will be counted as sentence served, while that spent on special leave will not count as such. The period spent on special leave will be treated as ‘out days’ or sentence suspended for all purposes.”** This too is in conformity with section 432(1) CrPC as the days on which the accused was granted Special leave would not count towards his sentence but rather would keep the execution of his sentence in abeyance by suspension. Hence the first ingredient is satisfied.

With respect to the second ingredient, it must be proved that there was violation of a condition. It is clear from the facts of the case and the sequence of events that the accused No.1 knew of the intention of the other accused to shoot the movie and defame the aggrieved and while he was in the hospital to visit his wife yet he was not present in the same room as her nor was he with his daughter who was sent out with a nurse, rather he was in another room where the actors required for the remaining scenes as well as the Accused No.2 were also present. Further, on the subsequent day when he was at the mall with his daughter, he was wearing a colorful outfit which he must have changed upon entering the mall as his daughter was surprised to see it and inquired as to when he changed. Further at this time also his daughter was taken away by her nanny and his whereabouts were not known.

Through these acts it is clear that he was shooting during leave with the knowledge that such scenes would be defamatory therefore, his conduct is in violation of sub Cl. (c) of Cl. 17.18 of the model prison manual which states that “the prisoner will keep good behavior and will not commit any offence during leave.”

The offence therefore stands proved.

PRAYER

In lights of issues raised, arguments advanced and authorities cited, it is humbly prayed before the Honorable Court that

1. The Accused No. 1, 2 and 3 be convicted for conspiracy under section 120-B r/w Section 34 of BPC.
2. The Accused No. 2 be convicted of charges framed against him under Section 227 of BPC.
3. The Accused No. 2 and 3 be convicted on charges of extortion under Sec. 385 of BPC.
4. The Accused No.1, 2, and 3 be convicted for charges against them under section 501 & 502 of BPC.

Pass any order/orders as it may deem fit in the interest of justice.

ALL OF WHICH IS HUMBLY SUBMITTED,

COUNSEL FOR THE COMPLAINANT

MEMORANDUM FOR COMPLAINANT