

TEAM CODE: _____

BEFORE THE HONOURABLE SESSIONS COURT OF
BAMBI, THANE

S.C. NO.: 123 of 2014

State of Bambi

.....PROSECUTION

Vs

1) Panna Boy

2) Saba

3) Jaimil

.....DEFENCE

WRITTEN SUBMISSIONS ON BEHALF OF THE DEFENCE

Most Respectfully Submitted to the Hon'ble Sessions Court of Bambi, Thane.

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BOOKS

1. **Commentary on the Indian Penal Code by Ratanlal Dhirajlal and Professional Publication**
2. **The Code of Criminal Procedure by Ratanlal Dhirajlal.**
3. **The Law of Evidence**
4. **The Criminal Manual by Professional Publication**

WEBSITES

1. www.manufast.com
2. www.mahapolice.gov.in
3. www.humanrightsinitiative.org
4. www.bprd.nic.in
5. Mhada.maharashtra.gov.in

LIST OF ABBREVIATIONS

AIR	All India Reporter
BOM	Bombay
CL	Clause
CO.	Company
ORI	Orissa
S.	Section
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SUPP.	Supplementary
U.O.I	Union of India
U.P.	Uttar Pradesh
AC	Appeal Cases
AIR	All India Reporter
All.	Allahabad
A.P.	Andhra Pradesh
Bom.	Bombay
Cal.	Calcutta
CrLJ	Criminal Law Journal
CrPC	Criminal Procedure Code
Cut.	Cuttak
HC	High Court
H.P	Himachal Pradesh
ILR	Indian Law Review
HPC	Hindon Penal Code
Kant.	Karnataka

Ker.	Kerela
Mad.	Madras
M.P	Madhya Pradesh
Ori.	Orissa
Ors.	Others
Punj.	Punjab
Raj.	Rajasthan
U.P	Uttar Pradesh

STATEMENT OF JURISDICTION

The Hon'ble Sessions Court of Bambi, Thane has the Jurisdiction to try, entertain and dispose of the present case by virtue of Section 193 of the Code of Criminal Procedure, 1973.

Section 193 of the Criminal Procedure Code reads As follows:-

“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 CHARGES

1. I, Judge of the Sessions Court of Bambi, Thane, hereby charge, (i) Mr Panna Boy (ii) Mr Saba (iii) Mr Jaimil, as follows:

That you, on or about the 16th day of February 2014, at Bombay, printed posters and advertisements of the movie 'Hit Factory', a commercial venture, knowing or having reasons to believe that the same was defamatory, and thereby committed an offence punishable under Section 501, this coupled with Criminal Conspiracy having a Common Intention Under Section 120B read with Section 34 of the Indian Penal Code , and within the cognizance the Court of Sessions.

And I hereby direct that you be tried by the said Court on said charge.

2. I, Judge of the Sessions Court of Bambi, Thane, hereby charge, (i) Mr Saba (ii) Mr Jaimil, as follows:

That you, on or about the 16th day of February 2014, at Bombay, put Ms Naika in fear of injury, namely by calls threatening her to face dire consequences if she fails to co-operate for the completion of the movie 'Hit Factory', a commercial venture, in order to commit extortion, and thereby committed an offence punishable under section 385, Indian Penal Code, and within my cognizance.

And I hereby direct that you be tried by the said Court on said charge.

3. I, Judge of the Sessions Court of Bambi, Thane, hereby charge you, Mr Panna Boy as follows:

That you on or about in the month of March 2013, were sentenced by The Supreme Court of India to 5 years of rigorous imprisonment under Arms Act, 1959 and which punishment was remitted by granting parole in the month of February 2014 on your accepting the conditions and which you accepted and which you knowingly violated in the same period by secretly shooting some scenes for the movie 'Hit Factory', a commercial venture, and that you have thereby committed an offence punishable under Section 227, Indian Penal Code, and within my cognizance of the Court of Sessions.

And I hereby direct that you be tried by the said Court on said charge.

SUMMARY OF ARGUMENTS

1. THE ACCUSED IS NOT GUILTY OF BREACHING THE PROVISIONS OF SECTION 120B R/W SECTION 34 SECTION 501 AND SECTION 502 THE INDIAN PENAL CODE IN THE PRESENT CASE.

It is humbly submitted that in the light of inadequate circumstantial evidence and the onus of proof on the Prosecution being higher in case of Defamation, the guilt of the accused has not been determined beyond reasonable doubt. Furthermore, it is submitted that the case of Prosecution fails to put forth any evidentiary grounds proving any kind of criminal conspiracy coupled with common intention for Defamation of the Prosecution between the three accused namely- Mr. Saba, Mr. Jaimil and Mr. Panna Boy. The Defence also vehemently denies that there was a meeting of minds to defame Ms. Naika, an actress by releasing the advertisements of the movie “Hit Factory”.

2. POLICE INVESTIGATION WAS CARELESSLY PERFORMED AND SHOULD NOT BE TAKEN AS SUBSTANTIAL PROOF.

It is humbly submitted that the circumstantial evidence relied upon by the Prosecution is inadequate in the present case. In light of settled common law and presumption of innocence, it is the legitimate expectation of the Accused not to be convicted for the charges put forth against them by the State in light of inconclusive evidence to determine their guilt.

3. THE ACCUSED IS NOT GUILTY UNDER SECTION 385 OF THE INDIAN PENAL CODE.

It is submitted that the Defence for the two accused Mr. Saba and Mr. Jaimil at the outset denies all the false allegations of extortion made to Ms. Naika on 17th February, 2014. Furthermore, it is submitted that the case of Prosecution fails to put forth any evidentiary grounds proving such Extortion charges as the calls were made from 2 “public booths” which can be accessed by anybody, as Mr. Panna Boy has a huge fan following who wanted his movie to come on screen.

4. THE ACCUSED IS NOT GUILTY FOR VIOLATING ANY PROVISIONS OF THE MODEL PRISON MANUAL FOR THE SUPERINTENDENCE AND MANAGEMENT OF PRISONS IN INDIA AND MAHARASHTRA PRISON MANUAL, 1979 AND HE IS NOT LIABLE TO BE CHARGED UNDER SECTION 227 OF THE INDIAN PENAL CODE.

It is humbly submitted that the accused Mr. Panna Boy was out on a parole to take care of his ailing wife who was admitted at the Star Hospital, where he was permitted to go on a regular basis and to look after his young daughter who needed constant care. The Hospital and the Mall were both permissible visits of his under the provisions of the Model Prison Manual. Thus, the accused is also not liable to be charged under section 227 on grounds of the above stated reasons.

ARGUMENTS ADVANCED**1. THE ACCUSED IS NOT GUILTY OF BREACHING THE PROVISIONS OF SECTION 120B R/W SECTION 34 SECTION 501 AND SECTION 502 THE INDIAN PENAL CODE IN THE PRESENT CASE.**

It is humbly submitted to this Hon'ble Court that at this outset the Defence denies all charges, allegations made by the Prosecution . It is the case of the Prosecution that the Defence has, *inter alia*, defamed Ms. Naika (herein after referred to as the "Prosecutor"), the lead actress of the Movie "Hit Factory" by releasing the posters of the same. The Defence submits that the Prosecutor also alleges that the Mr. Panna Boy, Mr. Saba and Mr. Jaimil (herein after known as the accused) have conspired to defame her.

THE ACCUSED HAVE NOT COMMITTED THE OFFENCE OF DEFAMTION

It is submitted that the Accused as alleged by the Prosecution has published Defamatory matter (i.e. **The Advertisements of the movie "Hit Factory"**) in the said Prominent Newspapers and Magazines, the prominence of who's is not mentioned.

It is the case of the Complainant that she is defamed because she no longer wants to be associated with Mr. Panna Boy as he is a "convicted terrorist", the Defence submits to this Hon'ble Court that Mr Panna Boy had not been convicted under the Terrorists and Disruptive Act and it is incorrect to give him such a malicious title . In retrospect, the accused Mr. Panna Boy was jailed in the year 1993 for one and a half years, for illegal possession of arms and was released on bail. Thereafter he was a successful actor and gave many hit movies and was one of the most loved actors in the industry till he was convicted under the Arms Act by the Hon'ble Supreme Court in the month of March 2013. The Complainant being well aware of these facts,

yet signed up for a movie with the same actor in the year 2013 and that her association with the movie was not new. This clearly shows that the entire case of the prosecution is a mere afterthought.

It is also the case of the Prosecution that the trio have slyly used a body double that too without her consent to complete the remaining scenes of the movie, but in the posters they have used her name which has defamed her. To which the Defence submits that in the present case there is no iota of evidence to show that Ms Poonam was used as a body double for the completion of the movie. Even assuming if they have, the body double is not used for playing Ms. Naika but has been used for playing the character and has done two times earlier also during the her (Ms. Naika's) absence¹.

I. THE ACCUSED CANNOT BE HELD GUILTY UNDER THE PURVIEW OF EXPLANATION 4 TO SECTION 499:-

“No Imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or his calling, or lowers the credit of that person, or causes it to be believed of that person in a loathsome state, or in a state generally considered as disgraceful”²

The Meaning to be attached to the word ‘harm’ is not the ordinary sense in which it is used. By ‘harm’ is meant imputation on a man’s character made and *expressed to others* so as to lower

¹ Paragraph 7 of the Report of Police Officer on completion of investigation made under section 173 of the Criminal Code Procedure

² Explanation 4 to section 499 of the Indian Penal Code, 1860

him in their estimation. Anything which lowers him merely *in his own estimation* does not constitute defamation.³

Thus, Prima Facie, in the present case also, the Prosecution has, *inter alia*, alleged that the accused have defamed Ms. Naika by releasing the posters of the movie “Hit Factory” in her own opinion. Thus, the posters do not harm her image as the harm needs to be expressed to others. If these posters lower her reputation merely in her own estimation, such published matter would not constitute defamation as a man has no reputation to himself.

THE ACCUSED DO NOT STAND GUILTY UNDER SECTION 501 AND 502

It is humbly submitted that it is the prosecution’s charge issued against the accused under sections 501 and 502 of the Indian Penal Code. The defence hereby denies all such charges with help of all charges as stated below.

III.KNOWLEDGE THAT SUCH SUBSTANCE CONTAINS DEFAMATORY MATTER– It is submitted that the accused as proven above have not defamed Ms. Naika on any grounds as alleged in the Prosecution. The most essential ingredient to both these sections is *knowledge that such substance contains defamatory matter*. Moreover, the entire case of the Complainant is highly influenced by the Media and in verity it is nothing but an afterthought. As proved above, such matter cannot be called defamatory if it is only in the opinion of the person defamed. Thus, the accused are not guilty under sections 501 and 502 of the Indian Penal Code, 1860.

Thus, the Defence submits that the Prosecution’s case is based on false assumptions about her and her family’s reputation being tarnished with the posters of the movie “Hit Factory” merely in

³ J. Jayalalitha v. Arcot N. Veeraswamy, 1997 Cr LJ 4585 (Mad.), absence of averment in the complaint that because of the imputation the complainant’s reputation had been lowered in the estimation of others, dismissal of the complaint was proper.

her opinion which is not even relevant in the Court of Law. It is also submitted to the Hon'ble Court that the accused are not guilty under sections 501 and 502 of the Indian Penal Code, 1860, and such false charges should be quashed.

It is the case of the Complainant that this act of Defamation was performed by Mr Panna Boy, Mr Jaimil and Mr Saba who have Criminally Conspired against her. The Complainant has charged the Accused under Section 120B of the IPC which reads as follows:-:

“When two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means, such an agreement is designated a Criminal Conspiracy. Whoever is a party to such criminal conspiracy shall be punished with death, imprisonment for life or rigorous imprisonment for a term of two years or above.”⁴

I.THE ACCUSED ARE NOT INDULGED IN A CRIMINAL CONSPIRACY – It is humbly submitted that in the present case Mr. Saba, Mr. Jaimil and Mr. Panna Boy as alleged by the Prosecution, have not committed criminal conspiracy. Mr. Panna Boy was serving his sentence in jail and it was not possible to have any contact with him. Mr. Saba, Mr. Jaimil and Mr. Panna Boy had no common intention whatsoever to defame Ms. Naika. There is no proof to substantiate Ms. Naika's charges. In order for common intention to exist Participation of all the parties should be present.

When Mr. Saba and Mr. Jaimil went to Ms Naika's residence on the 16th of August 2013, to convince her to complete the remaining scenes she disrespected and humiliated them, and was very rude. If Mr. Saba and Mr. Jaimil wished to threaten Ms. Naika they could have done so earlier.

⁴ Section 120B of the Indian Penal Code, 1860.

Where there is no direct evidence, for example through the evidence of an approver, and the case for the prosecution is dependent on circumstantial evidence alone, it is necessary for the prosecution to prove and establish such circumstances as would lead to the conclusion of existence of a criminal conspiracy and rule out the theory of innocence.⁵

Since there is no direct evidence to prove that Mr. Saba, Mr. Jaimil, & Mr. Panna Boy had conspired against Ms. Naika even the phone records can not be proved to be linked with Mr. Saba, Mr. Jaimil and Mr. Panna. There is no way to say that they are guilty of the charge.

The necessary requisite is knowledge of the main object and purpose of the conspiracy.⁴ Since Mr. Panna Boy was in jail there is no way he could have conspired against Ms. Naika. He did not have any criminal intention.

Mr. Jaimil and Mr. Saba did not threaten Ms. Naika to complete the remaining scenes. The Prosecution is just making assumptions regarding the involvement of Mr. Saba, Mr. Jaimil and Mr. Panna Boy in a criminal conspiracy.

The Complainant has also charged the Accused for a Common Intention coupled with the said Criminal Conspiracy. Common Intention is defined in Section 34 of the Indian Penal Code as follows:

“When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for the act in the same manner as if it were done by him alone.”⁵

⁵ Chandrakant vs The State of Madhya Pradesh, AIR 1999 SC 1557

The expression “common intention” as stated in section 34 implies a pre-arranged plan and doing and an act in pursuance of the plan. It must be proved that the criminal act was done in concert pursuant to the pre-arranged plan.

There is not much substantial difference between conspiracy as defined in Section 120 B and acting on a common intention as contemplated in Section 34. While in the former the gist of the offence is their engagement and association to break the law even though the illegal act does not follow, whereas in the latter the gist of offence is the commission of a criminal act in furtherance of a common intention of all the offenders, which means that there should be a unity of criminal behaviour resulting in something.

Before any person is convicted with the aid of section 34 IPC, the ingredients that are required to be satisfied are that such person along with his co-conspirators have committed a criminal act and the act was done in furtherance of common intention

To bring home the charge of conspiracy within the ambit of section 120B it is necessary to establish that there was an agreement between the parties for doing an unlawful Act. It is difficult to establish conspiracy by direct evidence⁶.

Mr Saba, Mr Jaimil and Panna Boy have not conspired together to defame Ms.Naika under Section 501 and 502 of The Indian Penal Code where printing or engraving any defamatory matter and its sale amounts to defamation. **Assuming** they shot the remaining scenes with Ms. Poonam who is a body double of Ms. Naika it still does not amount to defamation. Ms. Naika was aware of the scenes to be shot and entered into a contract with the producer of the movie

⁶ Vijayan v. State of Kerala, 1999 (3) SCC 54: AIR 1999 SC 1086

⁴ Mohd. Amin v CBI (2008) 15 SCC 49; (2009) 3 SCC Cri 693

⁵ DB Naik, 1982 CrLJ 856 (Bom) ; Hari Ram, 1982 CrLJ 294 (HP)

“Hit Factory”. Ms Naika has just lent her face to the character in the movie. When she refused to play the character they just replaced her using another face.

It is also the case of the Complainant that the day she filed a case in the High Court for permanent injunction, she received calls threatening her to face dire consequences if she does not co-operate and to withdraw the said suit. Her claim is that these calls were made by the Accused. There is no cause to show prior meeting of minds. Hence this claim of hers is fallacious and is not supported by any substantial evidence.

Under section 120-A⁷ of IPC defines criminal conspiracy and its ingredients which are as follows:-

- a) an illegal act
- b) an act which is not illegal by illegal means , such an agreement is designated a criminal conspiracy⁸.

In the present case the Accused are not in the ambit of any of the abovementioned ingredients for their act to be classified as ‘Criminal Conspiracy’, neither did they commit any illegal act nor did they commit any legal act with illegal means. Hence it can be viably said that the prosecution is making baseless and flimsy allegations against Mr. Saba, Mr. Jaimil and Mr. Panna Boy as they did not commit criminal conspiracy and had no common intention and hence they cannot be charged under Section 120B read with Section 34 of the Indian Penal Code,1860 and that such charges should be quashed.

⁷ Kehar Singh v. State AIR 1988 SC 1883

⁸ K S Narayan v. S. Gopinathan, 1982 CrLJ 1611(Mad.)

2. THE ACCUSED IS NOT GUILTY UNDER SECTION 385 OF THE INDIAN PENAL CODE.

It is humbly submitted before this Hon'ble Court that the charge made against Mr.Saba, the Producer and Mr. Jaimil, the director (herein after known as the accused) of the movie "Hit Factory" under Section 385 of the Indian Penal Code is vehemently condemned.

The word "*Extortion*" as defined in Section 383 of the Indian Penal Code, 1860 reads as follows:-

"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'."

The paramount ingredient for an act to be named as extortion is that there should be that there should be a 'fear of injury' to 'deliver to any person any property'⁹. In the present case there has been no fear of injury as the prosecution claims. The claims that the threat calls were made by the accused is categorically denied. Secondly for extortion to occur there has to be a demand for some property, and in the current there has not been any mention of such property. Hence the claim of Extortion is completely based on flimsy grounds.

The claim by the prosecution is made under Section 385 of the Indian Penal Code, 1860 which reads as follows:-

⁹ Mani vs State of Kerela, 1989(1)KLJ59

“ Putting person in fear of injury in order to commit extortion.—Whoever, in order to the 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.”¹⁰

As aforementioned, that the claims made by the prosecution do not amount to extortion hence the application of this very Section in the present case is out of question. Section 383 of the IPC defines 'extortion' whereas Section 384 of the IPC is the penal section for extortion whereas Section 385 of the IPC is for attempt to commit extortion. In order to complete the act of extortion the person who was put in fear, must have been induced to deliver the property. It is contended that no offence what-so-ever has been made out from the materials available on record¹¹. Also the threat calls Ms. Naika claims to receive were from public booths and there is not a slightest of evidence to prove that the calls were made by the accused and hence the claim is insubstantial.

It is held that charge under Section 385 of the IPC is not sustainable if the property is not delivered by the person extorted and in the instant case also no property is alleged to have been delivered by the persons extorted to the accused¹². It is true that in Vena Ram and Ors. v. The State of Raj.¹³ One of the ingredients for offence under Section 385 of the I.P.C. is that the accused thereby induced the person to put in fear to deliver to some person, some property, or valuable security or something signed or sealed, which was convertible into a valuable security. In the present case any such evidence is lacking and if the Prosecution

¹⁰ Section 385 of the Indian Penal Code, 1860

¹¹ Biram Lal & Ors Vs State of Rajasthan, RLW 2007 (1) Raj. 713

¹² Vena Ram & Ors. Vs State of Rajasthan, 2002 WLC (Raj) UC 291

¹³ Supra.6

claims for such a crime the burden of proof completely lies entirely on the prosecution under Section 102 of the Indian Evidence Act, 1872.¹⁴

Carefully examining and taking into account all the facts and evidence of the present case, there is no case for the offence under Section 385 of the I.P.C. was made out against the accused as the essence of offence of extortion is actual delivery of possession of property by the person put in fear and the offence is not complete before such delivery and, therefore, it has been prayed that charge for offence under Section 385 of the I.P.C. be quashed.

3. PANNA BOY HAS NOT VIOLATED THE PROVISIONS OF THE MODEL PRISON MANUAL FOR THE SUPERINTENDENCE AND MANAGEMENT OF PRISONS IN INDIA AND THE MAHARASHTRA PRISON MANUAL, 1979 AND HE IS NOT LIABLE TO BE CHARGED UNDER SECTION 227 OF THE INDIAN PENAL CODE.

The Defence for the accused humbly submits to this Hon'ble Court that at the outset, we deny the charge under section 227 of the IPC.

Section 227 of the IPC reads as follows-

“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 already suffered any part of that punishment, then with so much of that punishment as he has not already suffered.”¹⁵

¹⁴ Saurabh Chaudri & Ors. Vs Union of India & Ors., AIR2004SC361

¹⁵ Section 227 of the Indian Penal Code, 1860

*“Remission is intended to be an incentive for good behavior and work. This concession is subject to subsequent withdrawal/forfeiture/revocation. The State Government reserves the right to debar/withdraw any prisoner, or category of prisoners, from the concession of remission.”*¹⁶

Mr. Panna Boy had a record of good behavior for the entire time he was in custody.

According to the Maharashtra Prison Manual, 1979-

*“A prisoner may be released on parole, for such period as the competent authority in its discretion may order in case of serious illness or death of any member of the prisoner’s family or of the closest relations or for any other sufficient cause.”*¹⁷

In the present case, Panna Boy had been granted a 30 day parole in the month of February to take care of his ailing wife who had been admitted to Star Hospital due to her critical health condition. Panna Boy also had a daughter, who would need his presence during this time. He had been granted parole earlier in December also to take care of his wife this was his second parole. During this 30 day parole period, Panna boy has not indulged in any “*misconduct*” as accused, and has not committed any offence under this Section. He had been granted parole to take care of his wife and daughter and he has not failed in his duties. Both his visits i.e. to the Hospital and the Mall were permissible visits. Moreover there is no mention of any restrictive conditions of the Parole, hence it cannot be said that he breached the parole conditions. There is also not a hint of any illegal activity performed by the Accused. Violating the conditions involves misusing, and in this very case there is no substantial evidence to prove his misuse of the said conditions.

¹⁶ Section 432 of the Criminal Code of Procedure, 1975

¹⁷ Maharashtra Prison Manual, 1979 (Ch.XXXVII Rule 19)

I.CIRCUMSTANTIAL EVIDENCE PROVIDED IS NOT ENOUGH TO PROVE PANNA'S GUILT:

In the present case, it has been alleged that Mr. Panna indulged in shooting of the film "Hit Factory". It has been said that Panna has 'misused his parole'. These charges are completely baseless. This charge is heavily dependent upon the chain of circumstantial evidence stitched together according to the whims of the prosecutrix.

- (a) Mr. Panna is not involved in shooting of the movie: On the 5th of February, when the alleged shooting of the movie took place in the hospital, Panna Boy had gone to meet his wife as he did every day, along with his daughter. On the same day, the director of the movie Mr. Jaimil had been admitted to Star Hospital due to a heart condition. First, it has been stated by Mr. Williams (the superintendent of Star Hospital) that the hospital premises are regularly booked for shooting of films and movies and also that the hospital had been booked between the 5th -7th of February for a shooting for which he did not know the full details about. Thus, it cannot actually be proved that the shooting for the movie "Hit Factory" was taking place. Secondly the CCTV footage which has been provided as evidence also shows Panna Boy in the hospital interacting with his fans and posing for pictures. This piece of evidence does not prove in any way, Panna's involvement in shooting of the movie. According to the FIR, in the footage provided, Panna Boy is seen interacting with Ms. Poonam, Mrs. Mashaal and Mr. Jaimil is seen interacting with a camera man. There was some kind of shooting going on, in the footage, as is stated in the FIR. In his statement, Panna has accepted that on the 6th of February, he had met Mrs. Mashaal and Ms. Poonam. Ms. Poonam had requested him for a few photographs and he had obliged. Moreover, Mrs. Mashaal in her statement has accepted

that she was in the hospital for shooting of a TV serial. Thus, it cannot be proved for certain that the shooting for the movie had taken place.

It has also been alleged that Mr. Panna indulged in shooting of the aforesaid movie in Central Mall. On the 8th of February, Panna went to the mall with his daughter. Again, CCTV footage from the mall has been provided. According to the FIR, Panna can be seen in the footage, even Ms. Poonam and Khushboo are seen in a few frames and Mr. Saba also appears in some frames. The premises of the mall are booked for shooting a lot of times. Mr. Saba in his statement has also accepted that he was working on developing a new TV serial. Nowhere can it be proved with certainty from these circumstances that Panna was indulged in shooting for a movie.

In the case of *Nga Po Ngwe v. Emperor*¹⁸ it has been stated that

“The Magistrate should not overlook the requirements of documentary evidence and the accused should not be questioned at all until proper evidence is on record”

In this case, the chain of events has been based on numerous assumptions and faulty inferences. The evidence provided cannot prove in all certainty the involvement of Mr Panna in any violation of any condition on which he was granted parole.

II. PAROLE CONDITIONS WERE NOT VIOLATED

As shown above, it cannot be proved beyond the scope of reasonable doubt that Panna had indulged in any offence.

Moreover, even if it is assumed that Panna did shoot for the movie “Hit Factory” during his parole, it cannot be counted as an offence. Even if he was shooting for a movie, Panna would still not violate any conditions of his “conditional remission” because shooting for an

¹⁸ AIR 1929 RANG 278 : 31 CrLJ 174:120 IC 692

incomplete movie during his parole would not amount to an offence. Also as proven earlier, Mr. Panna Boy has not conspired with Mr. Saba and Mr. Jaimil for defaming Ms. Naika.

To conclude, allegations as they stand make an offence. In the present case, the evidence provided does not support the allegations whatsoever. In a court of law, a charge has to be proved not only in law but also in fact, which in this case cannot be done. Hence, the charge against Panna Boy under Section 227 of the Indian Penal Code should be quashed.

4. POLICE INVESTIGATION WAS CARELESSLY PERFORMED AND SHOULD NOT BE TAKEN AS SUBSTANTIAL PROOF.

It is humbly submitted before this Hon'ble Court that the investigation under Section 173 of The Criminal Procedure Code, has not been up to the mark and that it is not in accordance with the facts mentioned. This Section deals with the report of a police officer/ investigator on completion of investigation. In the present case there are a number of **discrepancies** and it can easily be said that the investigation is not up to the mark and cannot be relied on.

Firstly, the investigation report says that Ms Naika has received threatening phone calls for withdrawing an injunction in The Hon'ble High Court for release of the movie "Hit Factory". It is highly evident from the transcript of call details, hereby annexed as Exhibit 4, there is no mention of any kind of withdrawal of the court case. She has been threatened by someone anonymous for completion of the movie. This hereby proves that the investigation is carelessly done and should not be held binding in the Court.

Secondly, it has been stated in the **Police Reports** that Mr Saba and Mr. Jaimil (herein after referred to as the "accused") have visited Ms. Naika's residence to convince her to complete the movie, whereas on the 5th of February, 2014 Mr Jaimil had been admitted in Star Hospital

as he complained of chest pain¹⁹. It is also mentioned in the given fact sheet that the accused have visited her residence on 14th of August, 2013.²⁰ This being another reason to prove the carelessness of the Investigator.

In the light of the above submissions of the Police Report, no offence in law has been committed. Hence by the submissions made above it is evident that the investigation has been carelessly performed and is not upto the mark. Hence it is submitted that the reports should not be binding in this case and the case shall solely depend on the facts and the cross-examination.

¹⁹ Paragraph 13 of the Fact Sheet.

²⁰ Paragraph 7 of the Fact Sheet.

PRAYER FOR RELIEF

Wherefore in the light of the facts of the case, charges framed, witness examined and cross-examined and authorities relied upon by the Prosecution, the Prosecution humbly prays before this Hon'ble Sessions Court of Bambu, Thane to adjudge and declare that:

- 1) The Accused **should be discharged** under Section 120B read with Section 34 of the Indian Penal Code, 1860.
- 2) The Accused **should be discharged** under Section 501 and 502 of the Indian Penal Code, 1860.
- 3) Mr. Panna Boy **should be discharged** under Section 227 of the Indian Penal Code, 1860.
- 4) Mr. Saba and Mr. Jaimil **should be discharged** under Section 385 of the Indian Penal Code, 1860.
- 5) To pass any such order as the Court may deem fit in light of justice, equity and good conscience.

Place: Bambi Thane

Sd/

On the 21st day of August, 2014

Advocates for Prosecution