

**SURANA and SURANA NATIONAL TRIAL ADVOCACY
MOOT COURT COMPETITION, 2014**



**IN THE
COURT OF SESSIONS
AT BAMBI, THANE**

S.C No. 123 of 2014

IN THE MATTER OF:

STATE OF BAMBI

(Prosecution)

Vs.

PANNA ...D1

SABA ...D2

JAIMIL ...D3

(Defence)

**FOR OFFENCES CHARGED UNDER
SECTION 120 B READ WITH SECTIONS 34, 227, 385, 501 and 502
OF THE BAMBI PENAL CODE, 1860**

Memorandum Submitted to the Hon'ble Sessions Judge

On Behalf of the Prosecution

--State of Bambi--

By Counsels for the Prosecution

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LIST OF ABBREVIATIONS

TERMS	MEANING
§	Section
¶	Paragraph
&	And
Ads	Advertisements
AIR	All India Reporter
Annex.	Annexure
Anr.	Another
Art.	Article
BPC	Bambai Penal Code
Cl.	Clause
Cr.	Criminal
CrLJ	Criminal Law Journal
CrPC	Code of Criminal Procedure, 1973
CS	Charge-Sheet

CTITF	Counter-Terrorism Implementation Task Force
DW	Defence Witness
FIR	First Information Report
Govt.	Government
HC	High Court
Hon'ble	Honourable
i.e.	That is
IPC	Indian Penal Code, 1860
MANU	Manupatra
No.	Number
Ors.	Others
P.	Page
PS	Police Station
PW	Prosecution Witness
r/w	Read with
SC	Supreme Court
SCC	Supreme Court Cases

SCR	Supreme Court Reporter
Supp.	Supplementary
TADA	Terrorist and Disruptive Activities (Prevention) Act
U/S	Under §
UOI	Union of India
V./Vs.	Versus
Viz.	Namely
w.r.t	With Respect to

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STATEMENT OF JURISDICTION

The Prosecution in the present case, State of Bambi, hereby most respectfully submits that this Hon'ble Court of Sessions at Bambi, Thane has applicable jurisdiction in S.C No. 123 of 2014, under § 177 read with § 209 of the Code of Criminal Procedure, 1973. The counsels on behalf of the Prosecution hence avail the honour of submitting before the Hon'ble Sessions Judge, their memorandum so as to prove the guilt of the accused upon them not pleading guilty. This document sets forth the facts, charges and corresponding arguments of the instant case. The Prosecution affirms that it shall accept any Judgment of the Court as final and binding upon itself and shall execute it in its entirety and in good faith.

All of which is respectfully submitted.

By:

Counsels for the Prosecution.

Place: Bambi, Thane.

STATEMENT OF FACTS**[A] BACKGROUND:**

Panna sentenced for 5 years in March 2013. The industry had hugely invested in him. His movie “Hit-factory” was almost complete. The producer, Saba had borrowed money and had invested on the lead actress, Naika. Few scenes for which she had declined along with others were remaining. After his conviction, Naika did not wish to be associated with him.

[B] EVENTS THAT UNFOLDED AND LED TO THE COMMISSION OF THE ALLEGED CRIMES

14th Aug 2013: Saba and Jaimil met Naika at her residence demanding cooperation for the scenes; she refused. They showed resistance but left. **3rd Feb 2014:** Panna got parole owing to his wife’s ill health after a month’s parole for the same in December, 2013. **6th Feb 2014:** Jaimil was admitted in Star Hospital. Seemingly, he wasn’t serious and was advised 2 weeks rest. Concurrently, a shoot for a new project was going on with equipments discreetly placed. Panna came with his daughter to meet his wife who was also admitted there. Later, his daughter was sent out. In an hour, he entered another room where two actresses i.e. Smt. Mashaal a yesteryears’ actress and Poonam, who resembled Naika were present. The room was readied for a shoot. **8th Feb 2014:** Panna spotted in a colourful outfit at Central Mall with his daughter who was sent with her nanny. Later, a crew and Poonam followed by Jaimil reached there. Lights were on for a shoot. **14 Feb 2014:** Ads of “Hit Factory” were seen and a controversy broke on Panna’s regular Parole. Rumours of him secretly shooting floated.

[C] SUIT FOR PERMANENT INJUNCTION, SUBSEQUENT THREATS AND THE TRIAL

16th Feb 2014: Naika filed a suit for permanent injunction. Alleged of a conspiracy and that she was defamed. Got 2 anonymous threatening phone calls to withdraw the suit. **17th Feb 2014:** Filed FIR against Saba, Jaimil and Panna. Charges accordingly framed under BPC.

STATEMENT OF CHARGES

The Prosecution, State of Bambi, most respectfully asks this Hon'ble Court of Sessions at Bambi, Thane to consider the following charges as framed by it in accordance with Chapter XVII of the Code of Criminal Procedure, 1973: -

--CHARGE-I--

SABA AND JAIMIL HAVE BEEN CHARGED U/S 385 OF THE BAMBI PENAL CODE, 1860 FOR THE OFFENCE OF PUTTING MS. NAIKA IN FEAR OF INJURY BY MAKING THE THREATENING PHONE CALLS IN ORDER TO COMMIT EXTORTION.

--CHARGE-II--

SABA, JAIMIL AND PANNA HAVE BEEN CHARGED U/S 120B READ WITH § 34 ALONG WITH §501 AND §502 OF THE BAMBI PENAL CODE, 1860 FOR THE OFFENCE OF CRIMINAL CONSPIRACY READ WITH COMMON INTENTION FOR ILLEGALLY COMPLETING THE MOVIE LEADING TO NAIKA'S DEFAMATION AND LOSS OF REPUTATION.

--CHARGE-III--

PANNA HAS BEEN CHARGED U/S 227 OF THE BAMBI PENAL CODE, 1860 FOR THE OFFENCE OF VIOLATION OF CONDITIONAL REMISSION DURING THE PUNISHMENT TENURE BY SECRETLY SHOOTING FOR THE MOVIE HIT FACTORY, HENCE ABUSED HIS PAROLE.

SUMMARY OF ARGUMENTS

- I. SABA AND JAIMIL HAVE BEEN CHARGED U/S 385 OF THE BAMBI PENAL CODE, 1860 FOR THE OFFENCE OF PUTTING Ms. NAIKA IN FEAR OF INJURY BY MAKING THE THREATENING PHONE CALLS IN ORDER TO COMMIT EXTORTION.**
- A. *The accused are attempting to extort u/s 385 of BPC*** as (i) they intentionally put a fear of injury in Ms. Naika's mind (ii) by dishonestly inducing her and thereby (iii) instilling an apprehension in her mind that she would have to part with property or a valuable security.
- B. *Arguendo, the charge may be altered in compliance with the provisions of CrPC*** as (i) under § 216 of the CrPC, since (ii) the present series of events raise doubts as to which offence is committed (iii) Alternatively, even if the charge is not altered; u/s 222(1) of the CrPC, the accused may be convicted for a minor offence not charged .
- C. *Thus, the accused have committed Criminal Intimidation u/s 503 of the BPC*** as (i) permanent sovereignty is subject to restrictions, and (ii) it is obligated to protect the habitat of the turtle.
- II. SABA, JAIMIL AND PANNA HAVE BEEN CHARGED U/S 120B READ WITH § 34 ALONG WITH § 501 AND § 502 OF THE BAMBI PENAL CODE, 1860 FOR THE OFFENCE OF CRIMINAL CONSPIRACY READ WITH COMMON INTENTION FOR ILLEGALLY COMPLETING THE MOVIE LEADING TO HER DEFAMATION AND LOSS OF REPUTATION.**
- A. *There was an agreement between the accused u/s 120 A of the BPC*** as (i) acts and conduct of Panna establish that he is a co-conspirator. (ii) Acts and conduct of Jaimil allude to his involvement in the agreement to conspire. (iii) Acts and conduct of Saba

are indicative of his key role in the Conspiracy. (iv) Acts of the accused implied existence of a Conspiratorial agreement.

B. *The agreement was to do the illegal act of defamation* as (i) an imputation has been published concerning Ms. Naika. (ii) It has been made by a visible representation and (iii) such imputation was made with the intention to harm, with knowledge & having reason to believe that it will harm Ms. Naika's reputation.

C. *Arguendo, if the movie completion is not illegal, its completed via illegal means* as editing and superimposition of Naika's pictures is illegal u/s 35B(b) of the Copyright Act, 1957

III. PANNA HAS BEEN CHARGED U/S 227 OF THE BAMBHI PENAL CODE, 1860 FOR THE OFFENCE OF VIOLATION OF CONDITIONAL REMISSION DURING THE PUNISHMENT TENURE BY SECRETLY SHOOTING FOR THE MOVIE HIT FACTORY, HENCE ABUSED HIS PAROLE.

A. *Panna violated his conditional remission by shooting for hit factory* as (i) he had accepted conditional remission of punishment in the form of Parole and (ii) knowingly violated the conditions on which the parole was granted.

ARGUMENTS ADVANCED

I. SABA AND JAIMIL HAVE PUT MS. NAIKA IN FEAR OF INJURY BY MAKING THE THREATENING PHONE CALLS IN ORDER TO COMMIT EXTORTION AND CRIMINAL INTIMIDATION.

The Prosecution alleges (A) Saba and Jaimil to have committed the offence of putting under fear of injury in order to commit extortion; and if the court feels otherwise, (B) altering the charge (C) it seeks to establish the offence of Criminal Intimidation upon the accused. Thus;

A. SABA AND JAIMIL ARE GUILTY OF ATTEMPTING TO EXTORT U/S 385 OF THE BPC.

1. The accused ought to be held guilty under § 385 for attempt to extort; and the ingredients of § 383, which engulfs the essentials of the charged offence are proved: as (i) the accused intentionally put fear of injury in Naika's mind by making the calls (ii) thereby inducing her to (iii) apprehend that she would have to part with a valuable security.¹

i. *Firstly, the accused had the intention to put fear of injury in Ms. Naika's mind.***a. The calls were made by/on behalf of Saba and Jaimil.**

2. On learning of Naika's intention to disassociate with Mr. Panna, Saba & Jaimil met Naika and demanded cooperation for completion of the movie. When she refused, they showed resistance. Naika received two anonymous phone calls on her mobile threatening of dire consequences to her and family, if she did not withdraw the suit.² Naika's number was known only to a select few including the accused.³ The transcript of the first call stated, "*How did you get my number?...we know everything.*" Next, Ms. Naika also suffered a risk of personal loss of reputation as the second call, stated that: "*Just two days*

¹ Ingredients of § 383, IPC. See also RS Nayak v. A.R Antulay, 1986 SCC (Cri) 256.

² Moot Problem ¶ 17 and 18.

³ Annex. I- Statement of Ms. Naika: PW-3.

shoot...very discreet...Else...Results will be tragic.” Such classified information about the movie, specifying the days of shoot left, along with the way of the shoot was known only to the perpetrators and can be deciphered from the fact that Mr. Jaimil offered Ms. Naika to shoot the movie discretely. These statements had the potential to deprave Ms. Naika of her sensitive image in the film fraternity by virtue of being a celebrity representative to the CTITF. Forcing her to do the remaining scenes and doing the movie would associate her with Panna and be tantamount to her reputation. Intertwining these facts with the with the jurisprudence on circumstantial evidence, a conviction is possible on circumstantial evidence if it forms a chain of evidence so complete as not to leave any reasonable doubt for a conclusion consistent with the innocence of the accused;⁴ it abundantly clear that the accused had hatched the plan to the threaten Ms. Naika.

b. The calls instilled fear upon reputation, body & family of Ms. Naika.

3. For the fulfillment of this pre-condition of ‘fear of injury’, it is essential that the extortioner must purposely intimidate. Moreover, the fear caused should be the one intended. § 44 of the BPC defines ‘injury’ as, an apprehension of harm to ‘body, mind, reputation or property’. Such a threat upon Naika is apparent from the following excerpt of the 1st call: “...it is not good for you...”(Alluding at infliction of bodily harm upon Ms. Naika) “...keep in mind, you have a big family.”(Indicative of a threat upon her family).

ii. ***Secondly, Ms. Naika was dishonestly induced by the accused.***

a. ‘Dishonest motive’ to complete Hit Factory by threatening Ms. Naika

4. Dishonesty may be inferred from acts of the accused, which indicate that he has acted with a motive other than what his acts naturally point to.⁵ § 24 of the BPC defines dishonesty as an act that causes wrongful gain or wrongful loss to a person. The accused

⁴ Harish Chandra Thange v State of Maharashtra, AIR 2007 SC 2957.

⁵ Hari Singh Gour; The Penal Law of India, 11th Edition (2006) at P. 4869.

have put Naika in fear of injury to withdraw the suit with a dual motive to enjoy a wrongful gain of freely making the movie and wrongful loss of reputation to Naika.

b. The calls implicitly 'induced' fear in Ms. Naika's mind.

5. An inducement may be express or implied. Only a mere hint from a highly placed person may be taken to heart more readily than a man of no consequence.⁶ Thus, even the implicit threat of 'dire consequences' from influential people in the film industry like the accused, who purportedly also had links with the underworld⁷ could induce enough fear.

iii. *Naika apprehended that she would have to part with property or valuable security.*

a. 'Document' which can create a legal right, is valuable security u/s 30,BPC.

6. Property' as used in the definition of extortion in § 383 of the IPC is not defined in the code and can be understood in the wider sense.⁸ Hypothetically, if subsequent the threats being given, Ms. Naika filed an 'application' for withdrawal of the suit, subsequent to which the High Court of Bambi passed an 'order' of allowing screening of the movie; these two together would be deemed to be 'documents' within the meaning of § 3 of the Indian Evidence Act, 1872 and § 29 of the BPC thereby intended to be used by the accused as evidence and create a legal right of showcasing 'Hit Factory' which would facilitate them earning remuneration & create a valuable security.

b. A threat can be believed to be a demand for property or valuable security.

7. Drawing a nexus of the financial position of the accused, who were constantly being pressurized by their creditors⁹ to the threat of 'dire consequences' being given to Ms. Naika; the only two possible ways of overcoming their abysmal position was to either

⁶ *Id* at P. 3776.

⁷ Moot Problem ¶ 7 (In reference to Mr. Shaikh's contacts of underworld financing in the Bambi film industry).

⁸ *Supra* N. 5 at P. 3780.

⁹ Moot Problem ¶ 6; Statement of DW-3; Police Report ¶ 11.

compel Ms. Naika to withdraw the suit, or ask her for money, immovable assets or the like. Thus, in the rush of momentum, it is quite plausible that a reasonable person would be induced with thoughts of all these threats; be it monetary or otherwise.

B. ADDITIONALLY, THE CHARGE MAY BE ALTERED IN COMPLAINT WITH THE CrPC.

8. In humbly requested that, (i) the instant charge be altered since (ii) the acts of the accused are so closely knit that it is doubtful as to which of the offences is committed and therefore, they may be charged in alternate. Finally, (iii) In the event that the accused is found guilty u/s 506, then there is no injustice caused to him. Thus;

i. *The instant charge may be altered under § 216 of the CrPC*

9. The court shall be well within its power to alter the charge upon discovering the omission¹⁰ at any time before the judgment is pronounced.¹¹ When the public prosecutor forwards an application for alteration, it is not deemed to be illegal.¹² Thus, albeit the Charge u/s 385 holds grounds, another cognate offence u/s 503 is entailed here.

ii. *The present series of events raise doubts as to which offence is committed.*

10. As this case unfolds, it can be inferred in the alternate and shall subsequently be proved that if not an attempt to commit extortion, the accused have committed the offence of Criminal intimidation, as both are similar offences barring the essential of demand of property or valuable security in the former. The acts constituting these offences have occurred concurrently. The Hon'ble Supreme Court in *Mohinder Singh v. State of Punjab*¹³ held that; "*If...it is doubtful on facts proved which of several offences has been committed; the accused may be charged with one...or several offences in alternatives.*" If

¹⁰ Enumula Subba Rao v. State of A.P, 1979 CrLJ 258; Mohd. Islam v. State of U.P, 1993 CrLJ 1736 (All).

¹¹ State of Maharashtra v. Salman Salim Khan (2004) 1 SCC 525.

¹² Radhey Shyam v. State of U.P 1992 CrLJ 202 (All).

¹³ Mohinder Singh v. State of Punjab, AIR 1999 SC 211.

the accused is cleared with one offence and it appears on evidence that he has committed a different offence for which he might have been charged, he can be convicted of that.¹⁴

- iii. *Alternatively, even if the charge is not altered; as per § 222(1) and (2) of the CrPC, no injustice is caused if the accused is convicted of a minor offence not charged.*

11. There shall be no injustice caused to the accused if the offence of Criminal intimidation is proved against them. It is submitted that, when an accused is charged of an offence consisting of several particulars, some of which constitute a minor offence, he can be convicted of such minor offence. Under § 222(1) and (2) when an accused is charged with an offence and facts are proved which reduced it to a minor offence, he can be convicted of minor offence even though he is not charged with such offence. Thus, since the punishment for criminal intimidation u/s 506 of the IPC is 2 years as opposed to the punishment of 3 years set forth u/s 385 of the code; it is only in the interest of the accused to be eventually held guilty for a lesser offence.¹⁵

C. SABA AND JAIMIL HAVE COMMITTED CRIMINAL INTIMIDATION U/S 503 OF THE BPC

12. This argument shall testify that (i) Ms. Naika was threatened with injury to her reputation and her family. Also, (ii) the threat caused alarm in her mind. Thus,

- i. *Firstly, Ms. Naika was threatened with injury to her reputation and family.*

a. The threats were made by Saba and Jaimil

13. Criminal intimidation is a declaration of an intention to inflict injury to the person, reputation or property of an individual or group of individuals¹⁶ and must be

¹⁴ Surendra Singh v. State of Bihar, (2002) 1 SCC 266.

¹⁵ See Shamnsaheb M. Multani v. State of Karnataka (2001) 2 SCC 577.

¹⁶ In re, A.K Gopalan, (1948) 2 M.L.J 383 50 CrLJ.

communicated to them.¹⁷ The intention to threaten referred here can be ascertained from the essential of fear of threat of injury, as testified while proving extortion.

- b. Alternatively, it is immaterial as to who made the calls and does not absolve the accused of § 507 of IPC, as the threats were lucidly conveyed.

14. It is only pertinent that the accused intended that a communication should reach the person threatened and influence him to the consequence contemplated in the §. The facts state that Ms. Naika received an anonymous phone call. The defense categorically denies making it. However, it would serve their purposes to intimidate Ms. Naika and induce her to withdraw the suit. Hence, it can also be believed that the calls were made by a 3rd party at their behest, which would still point the mens rea at Saba and Jaimil.

- ii. ***Secondly, the threats caused alarm in Ms. Naika's mind to omit from doing a legal act she was entitled to do.***

- a. The threats caused alarm, which led her to file the police complaint.

15. It is not a usual occurrence, to be threatened of dire consequences. An intimidation of such a nature is bound to cause an alarm in the mind of anyone. The veracity of this assertion can be deciphered from the subsequent action of Ms. Naika on 17th February 2014 when she filed a police complaint against the perpetrators. Even if such a reaction does not stand the test of an alarm being caused, it is submitted that the calls were made with a motive to cause an alarm. It does not matter whether the calls had actually caused any alarm or not, if the intent was to cause alarm.¹⁸

¹⁷ Ganga Chunder Sen v. Gour Chunder Banikya. I.L.R 15 Cal. 671.

¹⁸ Gorige Pentaiah v. State Of A.P. and Ors. S.L.P (CrI.) No. 3743/2007.

II. SABA, JAIMIL AND PANNA HAVE COMMITTED CRIMINAL CONSPIRACY BY COMPLETION OF THE MOVIE LEADING TO HER DEFAMATION AND LOSS OF REPUTATION

The prosecution asserts that (A) there was an agreement between Panna, Jaimil, and Saba and (B) the said agreement was to do an illegal act resulting in the defamation of Ms. Naika and (C) Arguendo, even if movie completion is not illegal, it is completed through illegal means.

D. THERE WAS AGREEMENT BETWEEN THE ACCUSED U/S 120A OF THE BPC.

16. Essential ingredients of the offence u/s 120A are (a) Agreement between two or more persons who are alleged to conspire (b) It should be to do or cause to be done: (i) an illegal act, or (ii) an act which may not itself be illegal by illegal means.¹⁹ The element of agreement is the essence of this offence.²⁰ It may be proved by direct evidence or inferred from the conduct of the parties.²¹ Conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence for it. Prosecution often relies upon circumstantial evidence.²²

i. *Acts and Conduct of Panna establish that he is a co-conspirator in the conspiracy.*

17. Panna's conduct is contrary to that of a man out on parole to be on the bedside of his ailing wife. Given the pretext that his wife needed 'constant care'²³ and his daughter also needed his presence, it is highly strange for him to socialize in a hospital with old acquaintances and new starlets. Mr. Williams' testimony alludes that patients of the hospital are not intruded by shootings. Thus in a normal course when a visitor meets a

¹⁹ Ajay Aggarwal vs. Union of India and others, 1993 (3) SCC 609.

²⁰ State vs. Shukla VC, AIR 1980 SC 1382.

²¹ Sardar Sardul Singh Caveeshar vs. State of Maharashtra, 1964 (2) SCR 378.

²² K.R. Purushothaman v. State of Kerala, (2005) 12 SCC 631: State of Tamil Nadu v. Nalini, (1999) 5 SCC 253

²³ ¶10, Moot Problem.

patient it is highly unlikely that he walks into a shooting set. It is questionable as to why Panna sent his daughter away and left his wife's side. Mashaal was asked by Panna and Jaimil to take few shots with Panna and Poonam. Poonam also stated that she was shooting with Panna and Mashaal.²⁴ When Panna's conduct is perused under the light of Ganesh's testimony that, he shot him with Poonam²⁵ it becomes amply clear that he shot the scenes of the movie, instead of merely socializing with Mashaal and Poonam.

18. Another peculiar aspect of Panna's dubious conduct is the need for him to change his clothes while he is on a visit to meet his wife. These overt acts are significant, since by the means of such acts that the existence of a conspiracy can be made out. But the criminality of the conspiracy is independent of the criminality of the overt act.²⁶ Inspector Sunder observed that in some shots on 8th February, Panna was wearing an old fashioned colourful outfit. The cameraman also stated that the same could be for a continuation shot. Panna's daughter was herself perplexed as to when did he change his clothes. Khushboo also stated that Panna was wearing a colourful retro shirt.²⁷ He subsequently visited the Central mall to buy some things for his daughter, but again instead, he left her with her nanny. Ganesh has also stated that he had shot Panna at the central mall. There maybe some discrepancy between the narrations of different witnesses due to errors of observation, memory, mental disposition and the like.²⁸ Trivial discrepancies ought not to obliterate otherwise acceptable evidence of eyewitnesses²⁹ as they do not go to the root of

²⁴ ¶6 and 7, Annex. 3, Moot Problem.

²⁵ Annex. 1, Mr. Ganesh, Camera Man - PW5.

²⁶ Keher Singh and ors vs State AIR 1988 SC 1883.

²⁷ Exhibit. 1, r/w ¶3, Annex. 3, Moot Problem., ¶15, Moot Problem and Annex. 1, Ms. Khushboo- PW-3

²⁸ State of Rajasthan vs. Kalki and Anr, 1981 CriLJ 1012.

²⁹ Leela Ram vs. State of Haryana, AIR 1999 SC 3717; Sajjan Kumar vs. State of MP, 1999CriLJ 4561.

the prosecution story and need not be given undue importance.³⁰ Khushboo stated that shooting was happening at the mall, which is corroborated further by the Mall superintendent. Panna, Poonam and Saba were present there along with Jaimil at the time of shooting. When all these facts are read conjunctively, it becomes vividly clear that Panna was part of the larger plan to discreetly shoot the film, and his conduct reflects that he acted in agreement with Jaimil and Saba.³¹

ii. Acts and Conduct of Jaimil allude at his involvement in the agreement to conspire.

19. Jaimil's conduct is equally conspicuous, giving an impression that there is much more than what meets the eye. He shockingly gets ill and is admitted to Star hospital, exactly during time when there is a shoot going on at Star hospital. Furthermore, when he is advised complete rest for 2 weeks, he instead visits the Central mall, exactly at the same time when there is a shoot going on at the mall, with Panna, Poonam and Saba present there. Thus, *res ipsa loquitur*, his conduct reflects the agreement with his co-conspirators.

20. Loosened standards prevail regarding admissibility of evidence in a conspiracy trial.³² According to Ganesh, Jaimil had asked him to shoot Poonam at such angles so that her likeness with Naika is accentuated.³³ This can be verified from the posters too, which portray side angle poses of the actress.³⁴ Furthermore, inspector Sunder reported that the CCTV footage shows Jaimil interacting with the cameraman and Poonam. Even Ms.

³⁰ Jagdish vs. State of Madhya Pradesh, 1981 CriLJ 630.

³¹ Annex. 1, Inspector, Ms.Khushboo – PW-2, Mr. Ganesh, Camera Man - PW5, r/w ¶5, Annex. 3, Moot Problem and ¶15, Moot Problem

³² Firozuddin Basheerudin vs State of Kerala, (2001) 7 SCC 596.

³³ Annex. 1, Mr. Ganesh, Camera Man - PW5.

³⁴ Annex. 5, Moot Problem.

Poonam also felt that she was used as a dupe.³⁵ In cases of conspiracy, the agreement between the conspirators cannot directly be proved but only be inferred from the facts.³⁶ When these facts are appreciated in conjunction, a clear inference can be drawn that Jaimil had also acted to the common plan of shooting the movie surreptitiously.

iii. *Acts and Conduct of Saba are indicative of his key role in the Conspiracy.*

21. Saba had borrowed huge sums of money and is under pressure to return it.³⁷ Motive is something, which prompts a man to form intention.³⁸ The facts constituting motive for Saba to be party to the conspiracy are relevant in the present case.³⁹ He had also gone to Naika's house to try and include her in their plan of covertly shooting the movie. He was also present at the hospital and mall when their conspiratorial plan was executed.

iv. *Conduct of the accused implied existence of a conspiratorial agreement.*

22. When the conduct of the accused is looked in isolation, one may consider it to be a bunch of coincidences. However, when they are scrupulously perused in conjunction, it leads to a clear implication that there was existence of a conspiracy in the present matter. The Hon'ble Apex Court has held that, for an offence under § 120-B, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication."⁴⁰

³⁵ ¶ 3 and 8, Annex. 3, Moot Problem.

³⁶ Bimbadhar Pradhan vs State of Orissa, AIR 1956 SC 469; State v. Navjot Sandhu, (2005) 11 SCC 600.

³⁷ ¶ 11, Annex. 3, Moot Problem.

³⁸ Basdev vs State of Pepsu AIR 1956 SC 488.

³⁹ Section 8, Indian Evidence Act, 1872.

⁴⁰ Mohammad Usman Mohammad Hussain Maniyar and others vs. State of Maharashtra, 1981 (2) SCC 443.

E. THE AGREEMENT WAS TO DO THE ILLEGAL ACT OF DEFAMATION.

23. The second essential for proving existence of a criminal conspiracy is that of establishing that the agreement to conspire is to do an illegal act or a legal act by legal means. To establish this charge, knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary.⁴¹ By virtue of the plan to discreetly complete the movie and the subsequent dissemination of its posters the accused had knowledge of the fact that the same would lead to harming Ms. Naika's reputation and thereby lead to her defamation. However, in spite of having the knowledge of the same, the accused roped in Poonam and shot intimate scenes of her, subsequently released posters of the same so as to induce the public to believe that it is Naika in the photographs. The accused had complete knowledge that the services of Poonam would be put to the unlawful use of completion of movie leading to Naika's defamation. The Hon'ble Supreme Court has observed: -

*"In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself... the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use."*⁴²

24. It is no defence that the accused only wished to shoot the movie and defamation was unintentional, since it is immaterial whether the illegal act is the ultimate object of such crime, or is merely incidental to it.⁴³

25. Defamation is committed here as (i) imputation has been published concerning Naika. (ii) been made by a visible representation (iii) imputation was made with intention to harm, or with knowledge or having reason to believe that it will harm Ms. Naika's reputation.⁴⁴

⁴¹ State of Maharashtra vs. Somnath Thapa, AIR 1996 SC 1744.

⁴² *Ibid.*

⁴³ Saju v. State of Kerala (2001) 1 SCC 378.

i. *An imputation has been published concerning Ms. Naika.*

26. An imputation implies an accusation or something more than of suspicion.⁴⁵ There were advertisements of the movie via posters in popular newspapers and magazines, which showed Naika and Panna together reflecting intimacy amongst them. Naika had clearly said that she did not wish to be associated with Panna, as it would tarnish her reputation.⁴⁶ It can be inferred that an imputation has been made against Naika that she is willing to work with Panna. It is immaterial whether the imputation is conveyed obliquely or indirectly.⁴⁷ Additionally, Naika never clicked such pictures with Panna, The posters are reproduced through editing/ tampering of her old photographs, or either using a dupe. However, the caption in the photograph implies that it is Naika. Publication of photograph with a false caption in a newspaper has been held defamatory.⁴⁸

ii. *Such imputation has been made by a visible representation.*

27. This imputation has been made by a visible representation. The posters have been published in the leading newspapers and magazines, which imply that this imputation is made to the public. The maker of the defamatory material should intend that the work be seen by someone else other than the defamed person,⁴⁹ in the present case, the visible representation of imputation is done through picture posters proliferating in the media.

⁴⁴ Ingredients § 499 of BPC. *See also* N.C.E.R.T. v. P.D. Bhatnagar (1980) Raj Cr Cases 392 397;

⁴⁵ K.D Gaur, Indian Penal Code, 4th Ed. (2009) at P. 812.

⁴⁶ ¶2, Page 2, Moot Problem.

⁴⁷ *Supra* N. 45 at P. 815.

⁴⁸ *Monson v. Tussauds Limited*, (1894) 1 QB 671: K.D. Gaur pg. 816

⁴⁹ *Queen Empress v. Taki Hussain*, (1885) ILR 7 All 205.

- iii. *The accused had knowledge and reason to believe that this imputation will severely harm the reputation of Ms. Naika.*

28. There must be intention to harm the reputation, or the knowledge that the imputation will harm the reputation.⁵⁰ It is not necessary that the actual harm should result in defamation.⁵¹ Naika had made it tacitly clear that she is not willing to work with Panna. Moreover she unequivocally stated that she doesn't wish to do intimate scenes. When the accused demanded co-operation from her, she categorically refused them. The accused possessed prior knowledge that Naika would be put to disrepute if these posters or the movie were released and still they released it. Printing & selling defamatory articles is punishable u/s 501 and 502 of the BPC. Completion of movie, dissemination of its posters & selling of distribution rights establish the second ingredient of illegal act of § 120A along with being a substantive offence in itself under § 501 and 502; if the Court feels otherwise, the accused are culpable u/s 500 read r/w 499 of BPC.⁵²

F. ARGUENDO, IF MOVIE COMPLETION NOT ILLEGAL, ITS COMPLETED VIA ILLEGAL MEANS.

29. In alternative, even if this court is of the view that the completion of the movie is legal and the same has not resulted in defamation, then also the charge of criminal conspiracy stands, since the completion of the movie is done through illegal means. An illegal act is defined under § 43 of the BPC. The word 'illegal' has been given a very wide meaning, and is extremely comprehensive⁵³, it includes anything, which furnishes a ground of civil

⁵⁰ Chellappan pillai v. Karanjia, (1962) 2 Cr Lj 142; K.D Gaur, Indian Penal Code, 4th Ed. (2009) at P. 817.

⁵¹ TG Goswami v. State, AIR 1952 Pepsu 165.

⁵² *Supra N. 14.*

⁵³ K.N Chandrasekharan Pillai- Essays on the Indian Penal Code, Indian Law Institute, 2005 at P.171

action, or anything where the offence is punishable under a code, or any special law⁵⁴. It is further submitted that conspiracy will include all combinations involving violation of private rights.⁵⁵

30. Through using editing techniques such as superimposition, the accused have violated § 38B(b) of the Copyright Act, 1957 which enshrines the moral rights of the performer which imbibes that the performer has the right to restrain, or claim any damages in respect of any distortion, mutilation or other modification of his performance, which would have a prejudicial effect on his reputation. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible.⁵⁶ Naika had stated that she feels working with Panna is not good for her career. Having knowledge of the same, it was known to the accused that such act of editing and superimposition would prejudice Naika's reputation. Even if considering the movie making was lawful, the same has been done in an unlawful manner entailing fulfillment of ingredients of § 120A of the BPC, thereby making the accused liable under § 120B read with § 34 of BPC.

III. PANNA HAS VIOLATED HIS CONDITIONAL REMISSION DURING THE PUNISHMENT TENURE BY SECRETLY SHOOTING FOR THE MOVIE HIT FACTORY, HENCE ABUSED HIS PAROLE.

The Prosecution alleges Panna that he violated his conditional remission during punishment tenure by secretly shooting for the movie and has, hence, abused his parole.

⁵⁴ *Supra N. 45* at p.215.

⁵⁵ Halsbury's Laws of England, (3rd Ed) Vol. 10 at pg. 505

⁵⁶ State of Tamil Nadu via the Superintendent of Police vs. Nalini, (1999) 5 SCC 253.

A. PANNA VIOLATED HIS CONDITIONAL REMISSION BY SHOOTING FOR HIT FACTORY

31. Panna ought to be held guilty under § 227 BPC which is also similar to § 432(3) CrPC,⁵⁷ since (i) Panna had accepted conditional remission of punishment in the form of parole and (ii) knowingly violated the conditions on which such parole was granted.’

i. *Firstly, Panna accepted conditional remission of punishment.*

32. Panna was let out on parole two times in continuous succession, which in itself was wrongful as per the provisions of the model prison Manual, 2003⁵⁸ since he was given a 30 day parole twice in quick succession. It was during his second parole, that he shot for completion of movie, by illegal means. ‘Remission’ used in § 227 has means break, grace, and interruption.⁵⁹ Since parole is a break from punishment to tend to pressing domestic issues, it comes under meaning of § 227.

ii. *Secondly, Panna knowingly violated the conditions of such parole*

33. Panna was let out on parole on the condition of look after his ill wife, and his daughter. It was stated that his wife needed constant care. It is clear that he violated the condition on by shooting for the movie.⁶⁰ Where a prisoner out on parole for the treatment of his mother had instead used the parole to marry of his sisters was, then he is in violation of the condition of parole, and thereby punishable.⁶¹

⁵⁷ Kashmiri v. State of Haryana and Anr. 2012 CriLJ 1735

⁵⁸ Rule 17.05 (21 days allowed in 1 year)

⁵⁹ Law of Crimes and Criminology, Kathuria R.P., Vinod Publications (P) Ltd., Vol. 2.

⁶⁰ Rule 19 Chapter XXXVII of the Maharashtra Prison Manual, 1979

⁶¹ H v. State of Maharashtra, 1/18 Cri WP 2491 of 2012

PRAYER FOR RELIEF

Wherefore in the light of the facts of the case, arguments advanced and authorities cited, Counsels for the Prosecution humbly pray and implore before this Hon'ble Court of Sessions:-

That it may be pleased to **Convict (u/s 235 of the CrPC)**:

1. **Saba, Jaimil and Panna** for the offence Criminal Conspiracy with the Common Intention and defamation of Ms. Naika u/s 120B/34, 501 and 502 of the BPC.
2. **Saba and Jaimil** u/s 385, 503 of the BPC for putting Ms. Naika in fear of injury in order to extort her and criminally intimidating her of dire consequences by making threats on phone calls.
3. **Panna** u/s § 227 of the BPC for violating the conditional remission on account of discretely shooting for the Movie Hit Factory.

The Court may make any other such order as it may deem fit in terms of justice, equity and good conscience.

And for this act of kindness the Prosecution shall as duty bound ever humbly pray.

Respectfully submitted,

S/d _____

Place: Bambi, Thane

Counsel(s) for the Prosecution

Date: 12th September 2014

(Public Prosecutor)