

SURANA & SURANA NATIONAL TRIAL ADVOCACY MOOT  
COURT COMPETITION – 2014

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IN THE COURT OF SESSIONS

BAMBI, THANE

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*STATE OF BAMBI*

...PROSECUTION

V.

*PANNA, SABA & JAIMIL*

...DEFENCE

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S.C. NO. 123 OF 2014.

ACCUSED FOR THE OFFENCES CHARGED UNDER THE FOLLOWING SECTIONS OF THE BARATA

PENAL CODE, 1860:

PANNA: SECTIONS 120B READ WITH 34, 227, 501 & 502; SABA: SECTIONS 120B READ WITH 34,  
385, 501 & 502; JAIMIL: SECTIONS 120B READ WITH 34, 385, 501 & 502.

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MEMORIAL FOR THE PROSECUTION

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**THE STATEMENT OF JURISDICTION**

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The Prosecution, most humbly and respectfully, submits that this Hon'ble Court has the requisite territorial and subject matter jurisdiction to entertain and adjudicate this matter under Section 177 read with Section 26 of The Code of Criminal Procedure, 1973. It is further submitted that all procedural requirements have been adhered to in the prescribed manner.

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**THE STATEMENT OF FACTS**

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1. In 1993, Panna Boy was arrested under the provisions of Terrorist and Disruptive Act. However, after serving about a year and half in jail, he was released on bail. Finally in March 2013, the Supreme Court of Barata held him guilty and sentenced him to five years rigorous imprisonment under Arms Act, 1959 for illegal possession of arms.
2. Before conviction, Panna and Naika were shooting for a movie- “Hit-factory”. A few intimate scenes which Naika had declined earlier and a few scenes at a big hospital were left. However, after Panna’s conviction, Naika refused to be associated with the film. Mr. Jaimil and Mr. Saba tried to persuade her forcefully and she had to call her security guards to ask them to leave.
3. Panna was first allowed parole in December 2013 and surprisingly on February 3, 2014 he got it again, citing his wife’s illness whom he visited daily at the Star Hospital. On February 6, Jaimil got admitted in the same hospital. Panna visited Smt. Mashaal (DW 5), who dons mother’s role for top movie stars and Ms. Poonam (DW 4), a starlet with striking resemblance with Naika at the hospital. On February 8, Panna wore a colourful retro outfit at the Central Mall where a shooting took place.
4. On February 14 posters of “Hit-Factory” were released and on February 16, Naika filed a suit in the High Court of Bambi for permanent injunction of the movie. That evening she received two threatening phone calls from anonymous numbers.
5. Next day, she filed a criminal complaint in the Bambi Central police station against Mr. Saba, and Mr. Jaimil and named Panna as a co-conspirator. The Assistant Commissioner filed an FIR and ordered for enquiry. Mr. Panna’s parole was cancelled and an arrest warrant for Jaimil and Saba was issued by the Metropolitan Magistrate. The Magistrate’s Court took cognizance of the chargesheet forwarded by the police after investigation, and thereafter, committed the case to the Court of Sessions in Bambi Thane.

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**THE STATEMENT OF CHARGES**

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1. Accused Mr.Panna Boy S/o Mr. Heera Boy has been charged for the offences under Section 120B r/w Section 34, Section 227, Section 501 and Section 502 of the Barata Penal Code, 1860.
2. Accused Mr. Saba S/o Late Mr. Musa Karim has been charged for the offences under Section 120B r/w Section 34, Section 385, Section 501 and Section 502 of the Barata Penal Code, 1860.
3. Accused Mr. Jaimil S/o Mr. Kabir has been charged for the offences under Section 120B r/w Section 34, Section 385, Section 501 and Section 502 of the Barata Penal Code, 1860.

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**THE SUMMARY OF ARGUMENTS**

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**I. CRIMINAL LIABILITY UNDER SECTIONS 501 AND 502 OF THE BARATA PENAL CODE, 1860.**

Even after many overtures by the accused, Ms. Naika completely disassociated herself from the movie after conviction of Mr. Panna by the Hon'ble Supreme Court of Barata. There was a prior knowledge on the part of the accused, of the defamatory imputations contained in the posters, advertisements and the movie in question, the publication of which, they could have prevented. The accused cannot, therefore, escape their liability.

**II. CRIMINAL LIABILITY UNDER SECTION 385 OF THE BARATA PENAL CODE, 1860**

It is humbly submitted before the Hon'ble Court that the mobile number of the actress was available only to very few people, being restricted to the film fraternity. No one else but the accused were to be benefitted and had an animus to make threatening calls to the complainant, so as to pressurize her to be a part of the film, albeit, against her wishes.

Furthermore, since the threat was to the Goodwill of Complainant, which is her intellectual property, capable of being sold or marketable, hence, the offence is made out under the aforementioned section.

**III. CRIMINAL LIABILITY UNDER SECTION 120B READ WITH SECTION 34 OF THE BARATA PENAL CODE, 1860.**

In the instant case, all the accused were aware of and had an interest in the common object which was to complete the shooting of the film irrespective of the means they may have to employ for the same. They received an assurance from the major financier of the movie, Mr. Shaikh, that if they completed the movie, he would take care of the creditors. Thereafter, it is evident that the accused entered into an agreement, and the entire chain of events which followed should be viewed as a whole and as a part and consequence of that agreement.

**IV. CRIMINAL LIABILITY UNDER SECTION 227 OF THE BARATA PENAL CODE, 1860.**

Panna involved himself in various criminal activities, as discussed above, during his ongoing sentence and such behavior is in contravention with the obligation he owes for the remittance and against good conscience. Hence, it is a fit case for violation of conditions of remission. Further, there has been violation of conditions of Parole as well. Parole is a form of conditional release granted to the prisoners after they have served a portion of their sentences, but in this case parole was grossly misused as a medium to act in a movie and the ground of illness of wife was set up as a ruse.

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**THE ARGUMENTS ADVANCED**

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**I. CRIMINAL LIABILITY UNDER SECTIONS 501<sup>1</sup> AND 502<sup>2</sup> OF THE BARAT PENAL CODE, 1860.**

- A.** Elements of Offence - Section 501 prescribes the punishment which may be imposed upon a person who prints or engraves any matter knowing or having good reason to believe that such matter is defamatory of any person<sup>3</sup> whereas, those who disseminate defamatory matter in print are punishable under Section 502.<sup>4</sup> The definition of defamation, is given in Section 499 of BPC, it consists of three essential ingredients viz.
- (i) MAKING OR PUBLISHING ANY IMPUTATION CONCERNING ANY PERSON,
  - (ii) Such imputation must have been made by words, either spoken or intended to be read or by signs or by visible representation and;
  - (iii) The said imputation must have been made with the intention to harm or with knowledge or having reason to believe that it will harm the reputation of the person concerned.<sup>5</sup>

**B. THE MATTER IN QUESTION IS DEFAMATORY AND THE ACCUSED HAD KNOWLEDGE OR REASON TO BELIEVE FOR IT BEING DEFAMATORY.**

In the case of *Asha Parekh and Ors. v. The State of Bihar*<sup>6</sup>, the Hon'ble Patna High Court observed as under: The essence of the offence of defamation consists in calling that

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<sup>1</sup> "501. Printing or engraving matter known to be defamatory - 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."

<sup>2</sup> "502. Sale of printed or engraved substance containing defamatory matter.—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."

<sup>3</sup> Thakker, C.K.,J. Ratanlal & Dhirajlal *Law of Crimes – Volume 2*, 23<sup>rd</sup> ed. New Delhi: Bharat Law House (1998), p. 2485.

<sup>4</sup> *Bijit Kumar Basu v. Dilip Kumar Sinha and Ors.*, (2006) 1 CALLT 624 HC: 2006 (2) CHN 45.

<sup>5</sup> *Bijit Kumar Basu v. Dilip Kumar Sinha and Ors.*, 2006 (2) CHN 45; (2006) 1 Cal LJ 29; *Vergheze MC v. Poonam TJ*, AIR 1970 SC 1876; 1970 CriLJ 1651 (SC); (1969) 2 SCR 692.

description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow creatures and those inconveniences to which a person who is the object of such unfavourable sentiment is exposed.<sup>7</sup>

In the instant case, Ms. Naika had from the very time that the controversy broke; avoided being in the company of Mr. Panna and after his conviction, she tacitly made it known in an interview that she has an impeccable name in the industry and did not wish to tarnish it by associating with a convict. Moreover, Ms. Naika belongs to a family of freedom fighter, her father was a Major in the armed forces and she herself has been the celebrity-representative of Barat to the Counter-Terrorism Implementation Task Force<sup>8</sup> of the United Nations. Therefore, even after many overtures by the accused, she completely disassociated herself from the movie.<sup>9</sup> It is evident from these facts that the releasing of revealing posters with her name on it and shooting the movie using a look alike distinctly amount to defamation. The accused were aware and had knowledge of these facts and nevertheless proceeded with the requisite intent to defame Ms. Naika. It therefore becomes apparent that the intention of the accused in making such imputation was to harm the reputation and they made it with the knowledge or reasonable belief that such imputation will harm the reputation of Ms. Naika.

**C. THAT THE ACCUSED PRINTED THE DEFAMATORY SUBSTANCE AND OFFERED TO MAKE A SALE THROUGH IT.**

Section 502 of the B.P.C. makes it clear that sale of printed or engraved substance containing defamatory matter knowing that it contains such matters is punishable.<sup>10</sup> In the instant case, there was a prior knowledge on the part of the accused, of the defamatory imputations

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<sup>6</sup> 1977 Cri. L J. 21: 1975 SCC OnLine Pat 57: 1976 PLJR 108.

<sup>7</sup> Note R, p. 175 of Lord Macaulay Report.

<sup>8</sup> Hereinafter referred to as "CTITF".

<sup>9</sup> Moot Problem, P.2, ¶ 6.

<sup>10</sup> *Ashok Kumar Jain and Ors v. State of Maharashtra and Anr*, MANU/MH/0017/1986.

contained in the posters, advertisements and the movie in question, the publication of which, they could have prevented. The accused cannot, therefore, escape their liability.

Moreover, Section 3 of the Indecent Representation of Women (Prohibition) Act, 1986 also prohibits advertisements containing indecent representation of women. Further, according to Rule 38 of Cinematograph (Certification) Rules 1983<sup>11</sup> any person advertising a film by means of insertion in newspapers, hoarding, posters, handbills or trailers shall indicate the category of certification. Non-compliance of this rule will be a cognizable and non-bailable offence under section 7 of Cinematograph Act 1952.<sup>12</sup> In the present case, the accused have failed to comply with this rule as the posters do not provide any information regarding the category of certification that has been given to the movie.

## **II. CRIMINAL LIABILITY UNDER SECTION 385<sup>13</sup> OF THE BARAT PENAL CODE, 1860.**

Section 385 of the Indian Penal Code, 1860 provides for '*Putting person in fear of injury in order to commit extortion*'.<sup>14</sup> This section punishes an attempt which has failed to induce delivery of the property, but where the intimidation was intended to bring about that result.<sup>15</sup>

The offence under Section 385 has following essentials:

- (a) That the accused put any person in fear; or
- (b) The accused attempted to put any person in fear of any injury; and
- (c) The accused did so in order to the committing of extortion.<sup>16</sup>

<sup>11</sup> "3. Prohibition of advertisements containing indecent representation of women.—No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form."

<sup>12</sup> Central Board of Film Certification, Detailed Guidelines for Certification "A-rated content" P. 3.

<sup>13</sup> "385. 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."

<sup>14</sup> Thakker, C.K.,J. Ratanlal & Dhirajlal Law of Crimes – Volume 2, 23<sup>rd</sup> ed. New Delhi: Bharat Law House (1998), p. 1884.

<sup>15</sup> Gour, Hari Singh. Penal Law of India- Volume 4, 11<sup>th</sup> ed. Allahabad: Law Publishers (India) Pvt. Ltd. (2011), p.3786.



**A. THE ACCUSED HAD THE REQUISITE MOTIVE TO PUT MS. NAIKA AND HER FAMILY IN FEAR OF INJURY.**

In criminal cases, intention or motive for the knowledge under which the person act is an important consideration. Intention being a state of mind can never be directly prove as a fact. It is surrounding circumstances and also the conduct of the accused which help in ascertaining his intention.<sup>17</sup> As regards 'Injury', it includes such harm as may be caused illegally to a person's mind, body, reputation or property.<sup>18</sup>

It is humbly submitted before the Hon'ble Court that the mobile number of the actress was available only to very few people, being restricted to the film fraternity. No one else but the accused were to be benefitted and had an animus to make threatening calls to the complainant, so as to pressurize her to be a part of the film, albeit, against her wishes. They had also visited her on two prior occasions to pressurize her to do the movie.

**B. THE ACCUSED ATTEMPTED TO COMMIT EXTORTION.**

In *Biram Lal v. State*,<sup>19</sup> it was held that even if the offence of extortion is held to be not made out for want of delivery of the property at least, the offence of attempt to commit extortion is clearly made out. Under Section 385, even if extortion is not committed, it is possible that the accused may make preparation by putting the person in fear of injury to commit extortion.<sup>20</sup>

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<sup>16</sup> Venkatachaliah, M.N., J. *Ratanlal & Dhirajlal the Indian Penal Code*, 32<sup>nd</sup> Enlarged ed. Nagpur: LexisNexis Butterworths Wadhwa (2013), p. 2231.

<sup>17</sup> *Hayati Usta v. State*, AIR 1967 Goa 11 at p. 35.

<sup>18</sup> *In re, Mantri Mattapalli Narasimha Rao*, AIR 1919 Mad 954: 44 IC 973: 19 CrLJ 445.

<sup>19</sup> *Biram Lal v. State*, RLW 2007(1) Raj.713.

<sup>20</sup> Lal, Batuk. *Commentary on the Indian Penal Code, 1860- Volume 2*, 2<sup>nd</sup> ed. New Delhi: Orient Publishing Company (2011), p. 2301.

Extortion has been defined under Section 383<sup>21</sup> of the Barata Penal Code, 1973 wherein, it is required that the person must be put intentionally in fear of an injury to that person or to any other person and thereby dishonestly induced to deliver to any person any property or valuable security or anything signed or sealed which may be converted into valuable security.<sup>22</sup> In the instant case, the goodwill of Ms. Naika is the personal property that is being tampered with by the accused. In the case of *Anil Madhavdas Ahuja v. Marvel Fragrances Pvt. Ltd. & Ors*<sup>23</sup>, it was held that:

¶ 9“*The law is that there has to be an intention or means rea, on part of accused to bring home the charge. There are prima facie materials to hold that grave suspicion about involvement of the petitioner in the alleged crime existed, to justify framing the charges. Goodwill is a species of personal property capable of being sold or charged or of being bequeathed by will. Goodwill in a mark, in any event, is an asset and the proprietor of the mark has a right therein.*”

Also in the case of *Laxmikant V. Patel v. Chetanbhai Shah and Another*<sup>24</sup>, it was held by the Hon’ble Court that:

¶ 10“*With the lapse of time such business or services associated with a person acquire a reputation or goodwill which becomes a property which is protected by Courts.*”

Since the threat was to the Goodwill of Complainant, which is her intellectual property, capable of being sold or marketable, hence, the offence is made out under the aforementioned Section. There was a change in the condition of the contract between the accused and the

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<sup>21</sup> “383.Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits ‘extortion’ . ”

<sup>22</sup> *Sudarshan Kumar Luthra v. Madan Lal*, (1999) 3 Mah LJ 854.

<sup>23</sup> 2011 LawSuit(Bom) 1261.

<sup>24</sup> (2002) 3 SCC 65.

complainant, and thus the complainant rightly filed a suit for permanent injunction for which she received the aforementioned threats.

Furthermore, Section 503 BPC for criminal intimidation can also be relied on. Illustration-A to it mentions that, if A for the purpose of inducing B to resist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation. Therefore, the accused are also liable under the same. The Prosecution thus, invokes this power of the Court to try this charge along with other offences.

### **III. CRIMINAL LIABILITY UNDER SECTION 120B READ WITH SECTION 34 OF THE BARAT PENAL CODE, 1860.**

#### **A. ELEMENTS OF OFFENCE.**

Section 120-A<sup>25</sup> of the BPC defines conspiracy to mean that 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 as a criminal conspiracy.<sup>26</sup> Conspiracy is conceived as having two elements: (1) agreement between two or more persons who are alleged to conspire; and (2) the agreement should be for doing an illegal act or for doing by illegal means an act which may not itself be illegal.<sup>27</sup> Section 120-B prescribes the punishment for it. As regards Section 34<sup>28</sup>, it embodies the concept of Joint Liability. It simply says that all those persons who have committed a crime with a common intention and have acted while keeping in mind the

<sup>25</sup> “120A. Definition of criminal conspiracy.—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 an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

<sup>26</sup> *State Of Maharashtra v. Som Nath Thapa*, 1996 AIR 1744: 1996 SCC (4) 659.

<sup>27</sup> Thakker, C.K., J. Ratanlal & Dhirajlal *Law of Crimes – Volume 1*, 23<sup>rd</sup> ed. New Delhi: Bharat Law House (1998), p. 460.

<sup>28</sup> “34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

common intention, should be liable for the acts of another done in common intention as if the act is done by the person alone.<sup>29</sup>

**B. THE ACCUSED ENTERED INTO AN AGREEMENT TO COMMIT AN OFFENCE.**

Conspiracy itself is a substantive offence and is distinct from the offence to be committed, for which the conspiracy was entered into.<sup>30</sup> The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co- participants in the main object of the conspiracy.<sup>31</sup> The entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve.<sup>32</sup>

In the instant case, all the accused were aware of and had an interest in the common object which was to complete the shooting of the film irrespective of the means they may have to employ for the same. They received an assurance from the major financier of the movie, Mr. Shaikh, that if they completed the movie, he would take care of the creditors.<sup>33</sup> Thereafter, it is evident that the accused entered into an agreement, and the entire chain of events which followed should be viewed as a whole and as a part and consequence of that agreement. For an offence under Section 120B BPC, the prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication.<sup>34</sup> The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement may be proved

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<sup>29</sup> *Union Of India & Ors v. Sunil Kumar Sarkar*, (2001) 3 SCC 414: (2001) Insc 122.

<sup>30</sup> *Sudhir Shantilal Mehta v. Central Bureau of Investigation*, (2009) 8 SCC 1.

<sup>31</sup> *Rasheed Masood v. Central Bureau Of Investigation*, 2007 CriLJ 3900.

<sup>32</sup> *Ajay Aggarwal v. Union of India*, AIR 1993 SC 1637: 1993 SCC(Cri) 961: 1993(3) SCC 609.

<sup>33</sup> Moot Problem, p. 2, ¶7.

<sup>34</sup> *R.K. Dalmia v. Delhi Administration*, AIR 1962 SC 1821: (1963) 1 SCR 253: (1962) 2 Cri LJ 805.

either by direct evidence which is rarely available in such cases or it may be inferred from utterances, writings, acts, omissions and conduct of the parties to the conspiracy which is usually done. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.<sup>35</sup>

In view of Section 10 of the Evidence Act anything said, done or written by those who enlist their support to the object of conspiracy and those who join later or make their exit before completion of the object in furtherance of their common intention will be relevant facts to prove that each one of them can justifiably be treated as a conspirator.<sup>36</sup> It became evident from the conduct of Mr. Jaimil and Mr. Saba when they approached Ms. Naika on August 14, 2013 that they had conferred with the co-conspirator Mr. Panna, as only if they knew the dates for which he would seek parole could they have asked her to shoot on the same. However, when she declined, they got aggressive and she had to call her bodyguards to make them leave.<sup>37</sup> This turned them against her and they conspired to complete the film without her and even shot some very intimate scenes which she had declined, with her look-alike Ms. Poonam (DW 4), thereby conspiring to defame her.

On February 14, full page ads of the movie containing revealing images were printed in prominent newspapers and magazines with Ms. Naika's name on them. On seeing these ads, Ms. Naika filed a suit in the High Court of Bambi for permanent injunction of the movie. That very evening she received two anonymous phone calls threatening her of dire consequences to herself and her family if she did not withdraw the suit.<sup>38</sup> The circumstantial evidence all points to the fact that it was in fact the accused Mr. Jaimil and Mr. Saba who

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<sup>35</sup> *Sharad Yadav And Ors. v. Union Of India*, 1999 VIAD Delhi 821: 82 (1999) DLT 13.

<sup>36</sup> *Central Bureau Of Investigation v. Nalini & Ors.*, (1999) 5 SCC 253.

<sup>37</sup> Moot Problem, p.2, ¶ 7.

<sup>38</sup> Moot Problem, p.9, Annexure: 3, ¶ 1.

conspired to threaten her as she received the calls on the same evening, when even the news of her having filed the suit hadn't been published, and these calls were made from two public booths at different times pointing to the involvement of both the accused.<sup>39</sup> Furthermore, Ms. Naika has known them from the early days of her career and is bound to recognize their voices. This behaviour on their part is also in consonance with the aggressive way in which they pressurised Ms. Naika on August 14, when she had to call her guards.

The rationale of conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly.<sup>40</sup> In the present case, it cannot be argued that a lot of information and acts have been tried to be kept under a veil. Mr. Panna has taken parole twice within a period of less than one year of serving his sentence citing his wife's illness. However, nobody has any idea about what serious illness she suffers from<sup>41</sup> and she is admitted in a hospital which is often rented for shooting movies. On February 3, Panna was granted parole to be with his wife, and a suspicious incident took place wherein Mr. Jaimil also got admitted in the same hospital but clarified himself that it wasn't a serious illness.

However, there was a steady stream of visitors from the film industry and a shoot was going on for a supposedly new project for which cameras and lights were placed discreetly. Mr. Ganesh (PW 5) stated that he was taken as a cameraman by Mr. Jaimil without even being told the names of the actors, but was surprised to see Mr. Panna, Mrs. Mashaal (DW 5) and Ms. Poonam (DW 4), whom he shot for the film. Furthermore, Mr. Panna usually wore Kurta Pyjama but on February 8, he went to central mall where he wore a colourful retro outfit, where again, shooting took place and Mr. Ganesh has stated that the outfit was for continuity

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<sup>39</sup> Refer p. 13, Annexure: 4, *Transcript*.

<sup>40</sup> *Firozuddin Basheeruddin & Ors. v. State of Kerala*, (2001) 7 SCC 596, JT 2001 (6) SC 547.

<sup>41</sup> Moot Problem, p. 2, ¶ 11.

of the scene for the movie. The above facts, succinctly point towards the clandestine way in which the various acts were done, therefore strengthening the ground of a conspiracy between the accused, as privacy and secrecy are more characteristics of conspiracy than a loud discussion in an elevated place in public view.<sup>42</sup>

### C. THE AGREEMENT WAS FOR DOING AN ILLEGAL ACT.

Section 120-A and 120-B were brought on the statute book by way of amendment to BPC in 1913.<sup>43</sup> The Statement of Objects and Reasons to the amending Act reveals that the underlying purpose was to make a mere agreement to do an illegal act or an act which is not illegal by illegal means punishable under the law.<sup>44</sup> The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done.<sup>45</sup>

Under Section 43 of the Barot Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. This apart, the prosecution has not to establish that a particular unlawful use was intended as, the ultimate offence consists of a chain of actions.<sup>46</sup> The accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.<sup>47</sup>

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<sup>42</sup> *Esher Singh v. State of Andhra Pradesh*, AIR 2004 SC 3030: (2004) 11 SCC 585.

<sup>43</sup> Thakker, C.K.,J. Ratanlal & Dhirajlal *Law of Crimes – Volume 1*, 23<sup>rd</sup> ed. New Delhi: Bharat Law House (1998), p. 457

<sup>44</sup> *Fatima Bibi Ahmed Patel v. State Of Gujarat & Anr*, (2008) 6 SCC 789: (2009) 2 MLJ (CrI) 1152.

<sup>45</sup> *Major E. G. Barsay v. The State Of Bombay*, 1961 AIR 1762: (1962) 2 Cri LJ 282: (1962) 2 SCR 195.

<sup>46</sup> *State of Maharashtra v. Som Nath Thapa*, AIR1996 SC 1744: (1966)4 SCC 659: 1966 SCC (Cri) 820.

<sup>47</sup> *Major E. G. Barsay v. The State Of Bombay*, 1961 AIR 1762: (1962) 2 Cri LJ 282: (1962) 2 SCR 195.

In the present case Ms. Naika had tacitly disassociated herself from the movie publically after Mr. Panna's conviction and had even returned the advance that she took for it. However, even after being aware of her concern of damage to her image, the accused conspired to defame her with knowledge of the same, shot intimate scenes with her look-alike and released vulgar posters of the movie with her name on it. On her filing a suit against it, the accused Mr. Jaimil and Mr. Saba conspired to threaten her by making anonymous calls on her number.<sup>48</sup> Therefore they indulged in the illegal acts of printing and selling matter known to be defamatory as by publishing those ads they were selling a product which is the cause of Ms. Naika's defamation. Furthermore, Mr. Jaimil and Mr. Saba also committed the illegal act of putting Ms. Naika in fear of injury. Therefore, the accused were in an agreement to commit an illegal act.

**D. THE ACCUSED HAD A COMMON INTENTION UNDER SECTION 34<sup>49</sup> OF THE BARAT PENAL CODE, 1860.**

The offence of criminal conspiracy consists in the co-operation of two or more persons. It is necessary all the persons should share the common intention. The 'common intention' implies a prior concert, that is, a prior meeting of minds and participation of all the members of the group in the execution of that plan.<sup>50</sup> Common intention also means a desire to commit a criminal act without any contemplation of offence.<sup>51</sup> It deals with doing of several acts, similar or diverse in furtherance of common intention.<sup>52</sup> Direct proof of common intention is

<sup>48</sup> Refer P. 13, Annexure: 4, *Transcript*.

<sup>49</sup> "34. Acts done by several persons in furtherance of common intention.-- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

<sup>50</sup> *Harbans Kaur v. State of Haryana*, AIR 2005 SC 2969: (2005) 9 SCC 105; 2005 SCC (Cri) 1213; *Pandurang Tukia and Bhillia v. State of Hyderabad*, AIR 1955 SC 331: (1955)1 SCR 1083: 1955 Cri LJ 572.

<sup>51</sup> *Akanda v. Emperor*, AIR 1944 Cal 339: ILR (1944) 2 Cal 405.

<sup>52</sup> *Barendra Kumar Ghosh v. King Emperor*, AIR 1925 PC 1: ILR 52 Cal 197: 1926 Cri LJ 431.



seldom; therefore intention could be inferred from circumstantial evidences.<sup>53</sup> To infer common intention an inference by a Court must be premise on the incriminating facts established by the prosecution.<sup>54</sup>

The common intention of the accused can be inferred from the instances of certain undisputed facts in the present case. It is established that all the accused were in the Star Hospital on the dates on which the shooting of the film has been alleged to have taken place. Thereafter, again on February 8, when Mr. Panna wore a colourful retro outfit to the mall, he was soon followed by a crew of movie starlets led by Ms. Poonam (DW 4), followed by Mr. Jaimil and then the lights were on for a shoot.<sup>55</sup> For this to have occurred twice, clearly points that it wasn't a co-incident but it was something preplanned with a common intention between the accused. Moreover, the threatening calls received by Ms. Naika were ushered after a series of untowardly behavior of Mr. Jaimil and Mr. Saba towards her, thereby, again pointing towards their common intention in threatening her as well. Furthermore, as was held in the case of *Babu Lal v. Emperor*<sup>56</sup>, if several persons conspire to commit the offences and commit overt acts pursuant to the conspiracy, such acts must be held to have been committed in the course of the same transaction, which embraces the conspiracy and the acts done under it.

#### **IV. CRIMINAL LIABILITY UNDER SECTION 227 OF THE BARAT PENAL CODE, 1860.**

Hero Panna was convicted for the possession of a 9mm pistol and AK-56 assault rifle in March 2013. In *Sanjay Dutt v. State of Maharashtra*<sup>57</sup>, the accused was convicted for the

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<sup>53</sup> *State of M.P v. Desh Raj*, 2004 Cri LJ 1415: AIR 2004 SC 2764: 2005 SCC(Cri) 123: (2004) 13 SCC 199.

<sup>54</sup> *Idris Bhai Daud Bhai v. State of Gujarat*, 2003 SCC 277.

<sup>55</sup> Moot Problem, p.3, ¶ 15,16.

<sup>56</sup> AIR 1938 PC 130: (1938) 40 Bom LR 787.

<sup>57</sup> (2009) 5 SCC 787.

same offences under sections 3<sup>58</sup> and 7<sup>59</sup> read with Sections 25(1-A)<sup>60</sup> and (1-B)(a)<sup>61</sup> of the Arms Act. However, in the instant case, Hero Panna was sentenced only to rigorous imprisonment of 6 years. Therefore, his fine has been remitted. In *Abdul Gani v. State of Madhya Pradesh*<sup>62</sup>, a Division Bench of the Nagpur High Court has observed with regards to Section 432 of The Criminal Procedure Code, 1973:

*"...That section appears to us to empower the Government to remit in whole or in part a substantive sentence, whether of fine or imprisonment (because that would be the punishment for the offence awarded by the Court), passed on a person ..."*

The same view has also been adopted by the Allahabad High Court in *Paras Nath And Ors. v. State*<sup>63</sup>:

*"Section 432<sup>64</sup> of Criminal Procedure Code uses the word "punishment" to which a person has been sentenced. Consequently, the appropriate government has the power to remit fine also.<sup>65</sup>"*

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<sup>58</sup> "License for acquisition and possession of firearms and ammunition— (1) No person shall acquire, have in his possession, or carry any firearm or ammunition unless he holds in this behalf a license issued in accordance with the provisions of this Act and the rules made there under :  
Provided that a person may, without himself holding a license carry any firearms or ammunition in the presence, or under the written authority, of the holder of the license for repair or for renewal of the license or for use by such holder."

<sup>59</sup> "7. Prohibition of acquisition or possession, or of manufacture or sale, or prohibited arms or prohibited ammunition –No person shall –(a) acquire, have in his possession or carry ; or(b) [use, manufacture,] sell, transfer, convert, repair, test or prove ; or(c) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair test for proof, any prohibited arms or prohibited ammunition unless he has been specially authorized by the Central Government in this behalf."

<sup>60</sup> "(1A)- Whoever acquires, has in his possession or carries any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than five years, but which may extend to ten years and shall also be liable to fine."

<sup>61</sup> "(1B) Whoever-(a) acquires, has in his possession or carries any firearm or ammunition in contravention of section 3, or"

<sup>62</sup> AIR 1951 Nag 342.

<sup>63</sup> AIR 1969 All 116: 1969 CriLJ 350.

<sup>64</sup> "432. Power to suspend or remit sentences.- (1) 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."

Panna involved himself in various criminal activities, as discussed above, during his ongoing sentence and such behavior is in contravention with the obligation he owes for the remittance and against good conscience. Hence, it is a fit case for violation of conditions of remission.

Further, there has been violation of conditions of Parole as well. Parole is a form of conditional release granted to the prisoners after they have served a portion of their sentences<sup>66</sup>, but in this case parole was grossly misused as a medium to act in a movie, and the ground of illness of wife was set up as a ruse. In the case of *Amit Gandhi v. State of Maharashtra*<sup>67</sup>, it was held by the Hon'ble Bombay High Court that:

*“The age of the mother of the petitioner is only 52 years, and as reported by her doctor, she is suffering from hypertension and debility and nothing more. That cannot be called a serious ailment, since many people complain of hypertension and debility, and for which presence of the prisoner was not at all needed. Thus, in our opinion, there was a gross misuse and mis-utilization of the provision of parole and furlough by the petitioner.”*

Mr. Ganesh (PW 5) and the investigation officer (PW 2) in his report and have clearly indicated that the shirt worn by Hero Panna was the one published in a magazine and was for continuity of scenes. Further, Mr. Sundar has also stated in his report that the illness of Panna boy's wife was not so serious as to require his constant personal attention and also that his daughter was frequently left with the caretaker while he conveniently shot for the movie.<sup>68</sup>

The presence of Mrs. Mashaal (DW 5) along with a lookalike of Ms. Naika, Ms. Poonam

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<sup>65</sup> Lal, Batuk. *Commentary on the Code of Criminal Procedure, 1973- Volume 2*, 5<sup>th</sup> ed. New Delhi: Orient Publishing Company (2010), p.2377.

<sup>66</sup> Chakrabarti, Nirmal Kanti, *Probation Services in the Administration of Criminal Justice*, 1<sup>st</sup> edn., New Delhi: Deep & Deep Publication Pvt. Ltd, (1999).p-126.

<sup>67</sup> High Court Of Judicature At Bombay, Criminal Writ Petition No.680 of 2013.

<sup>68</sup> Moot Problem, Annexure-3, p.10, ¶ 3.

(DW 4) and Mr. Jaimil in the very same Star Hospital is no mere coincidence but a pre-planned setup. Section 10 of Prisons (Bombay Furlough And Parole) Rules 1959, states:

*“Conditions of release.:...(2) that the said prisoner shall be of good behavior and shall not commit any offence punishable by or under any law in force in India, (3) that the said prisoner shall not associate with bad characters or lead a dissolute life.”*

Ergo, Hero Panna defied the conditions of his parole and the same was arranged by the Co-accused and hence they should be held guilty under the aforementioned section. Moreover, In the case of *G.B Bathulwar v. State of Maharashtra*<sup>69</sup>, the Hon’ble Bombay High Court rejected the parole to 78 convicts due to the amendment in Rule 19 of the Prisons (Bombay parole and furlough) rules amendment in 2012 which barred the convicts from seeking parole within one year of their previous release, as the convicts were grossly misusing and abusing the provisions of grant of parole.

In the instant case, Hero Panna obtained parole in gross violation of rules and in a completely arbitrary manner. He belongs to a very illustrious family in the movie industry which has been very active in politics and has also been close to the ruling party. Panna was granted parole after one month from his last date of return to the prison<sup>70</sup> which is against the rules.<sup>71</sup> Thus, parole has repeatedly been obtained as a political favour and the same has been obtained by openly flaunting the rules, which was not possible but for their link ups.

<sup>69</sup> Criminal Writ 272 of 2012, Bombay High Court

<sup>70</sup> Moot Problem, p. 2, ¶ 10.

<sup>71</sup> *“19. When a prisoner may be released on parole.--A prisoner will be released on parole for such period not exceeding thirty days at a time as the Competent Authority referred to in rule 18 in its discretion may order, in case of serious illness or death of nearest relative such as father, mother, brother, sister, spouse, children or marriage of brother, sister and children of prisoner or pregnant woman prisoner for delivery (except high security risk prisoner) or in case of natural calamity such as house collapse, floods, fire, earthquake. No such parole or extension of parole shall be granted without obtaining a police report in all cases except in the case of death of his nearest relatives mentioned above: Provided that, a prisoner shall not be released on parole for the period of one year after the expiry of his last parole except in case of death of his nearest relative mentioned above.”*

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**THE PRAYER**

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Wherefore, in the light of the issues raised, arguments advanced and authorities cited, it is most humbly and respectfully prayed before this Hon'ble Court to adjudge and declare that:

- ❖ The accused Mr. Panna boy is guilty for offence u/s 120 B read with 34, 227, 501 & 502 of the Barata Penal Code, 1860.
- ❖ The Accused Mr. Saba is guilty u/s 120 B read with 34, 385, 501 & 502 of Barata Penal Code, 1860.
- ❖ The Accused Mr. Jaimil is guilty u/s120 B read with 34, 385, 501 & 502 of Barata Penal Code, 1860.

And any other order which this Hon'ble Court may be pleased to grant in the interest of justice, equity and good conscience.

All of which is most humbly and respectfully submitted.

Date:.....

Counsels for the Prosecution.

Place: Bambi