

## J. Senthil Kumar and Others Vs State of Jharkhand and Another

**Court:** Jharkhand High Court

**Date of Decision:** June 16, 2006

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 202, 482  
Penal Code, 1860 (IPC) â€” Section 30, 34, 383, 384, 406

**Citation:** (2006) CriLJ 4524 : (2006) 3 JLJR 702 : (2006) 4 EastCriC 31 : (2006) 3 AIRJharR 436

**Hon'ble Judges:** Rakesh Ranjan Prasad, J

**Bench:** Single Bench

**Advocate:** M.K. Dey, for the Appellant; T.N. Verma, APP, for the Respondent

### Judgement

R.R. Prasad, J.

This application under Sections 482 of the Code of Criminal Procedure has been filed by the petitioners for quashing the

order dated 14.6.2004 passed by Sri A.K. Pandey, Judicial Magistrate, Ranchi in Complaint Case No. 228 of 2004 whereby cognizance of the

offence under Sections 384 and 420 of the Indian Penal Code was taken against the petitioners.

2. Before coming to the case of the petitioners the facts giving rise this application need to be taken notice of which are as follows.

3. The complainant Abhishek Kumar Mishra lodged a case against the petitioners stating therein that when he came to know that International

Maritime Academy, Chennai, which shall be referred to hereinafter as "IMA" has invited applications on website for selection of the candidate for

the post of Dock Cadet required to undergo training by the IMA, after completion of the course for a prosperous career in Merchant Navy, he

having found himself eligible for the post of Dock Cadet sent draft of Rs. 300/- In favour of the IMA in order to have prescribed application. After

receipt of the application, he duly filled it up and sent the same along with true copies of the testimonial. Thereafter, he was informed that he has

been selected for the post and asked for a Bank draft of Rs. 15,000/- in favour of the IMA and also informed that he would be required to deposit

Rs. 55,000/- the balance course fee including expenses of odging, medical treatments supply of training equipments and study materials etc.

Further case is that the complainant sent Bank draft of Rs. 15,000/-. Subsequently, it was informed telephonically that a team of officials of IMA

would be visiting the residential places of all the candidates selected for the post for verification of the particulars furnished by the candidates and

for that purpose a team of officials is likely to visit the place of complainant on or about 15th February, 2004, on that date he would be ready with

the amount of Rs. 55,000/- in the shape of Bank draft and that on 16th February, 2004 when the three persons of the IMA visited, he handed

over two drafts one of the value of Rs. 30,000/- and the other for Rs. 25,000/- and then he was directed by them to report to the Institute on

20.2.2004 to undertake the course beginning from 1.3.2004. Subsequently, on 20.2.2004 complainant received a registered letter dated

18.2.2004 asking him to report to the office of IMA on 28.2.2004 along with balance amount of the course fee which took the complainant by

surprise as Rs. 55,000/- had already been collected by the official of IMA on his residence on 16.2.2004. However, complainant reported on the

date fixed and was asked to execute some documents which he did so and the Director of the IMA asked for Rs. 55,000/-. The complainant told

that the said amount had already been given at Ranchi. On hearing this, he lost his temper and asked to show receipt for the same, but the

complainant told them as it was never granted to him, he cannot produce the receipt. The complainant by the attitude of the Director got annoyed

and developed dislike for the Institute and its officials and decided not to join the course and, therefore, asked for Rs. 15,000, Rs. 30,000/- and

Rs. 25,000/- and it made the Director so enraged that he got him confined in a room and compelled him to give In writing that he has been leaving

the course on his own volition and will not claim the money and only when such letter was written by him, he was released and thus, it has been

alleged that the complainant did offence under Sections 406 and 420/34 of the Indian Penal Code. After filing the complaint, the statement of the

complainant was recorded on solemn affirmation and the matter was taken up for enquiry u/s 202 of the Code of Criminal Procedure, thereafter

learned Magistrate did hold by the impugned order that a prima facie case is made out under Sections 420 and 384 of the Indian Penal Code and

summoned the petitioners.

4. Being aggrieved by that order petitioners have filed this petition.

5. Learned Counsel appearing for the petitioners submits that this is a typical case of mala fide criminal prosecution and the complainant for making

a case of criminal prosecution has given distorted facts and the real state of affairs is that applicant applied for course pursuant to advertisement

made in the leading newspaper including in its website and on receipt of application as well as a draft of Rs. 15,000/-a temporary receipt of Rs.

15,000/- was given by the institute and intimated to the candidates including the complainant that they have to undergo a medical test and thereafter

the seat shall be confirmed and after confirmation candidates are required to pay the balance amount of Rs. 55,000/-. Subsequently, the

candidates were asked to report on 28.2.2004. On that date the complainant also turned up and complied all the formalities and also furnished a

letter of indemnity accepting the rules and regulation of the academy but the complainant for the reason best known to him became disinterested to

pursue his course and as such claimed refund of Rs. 70,000/- which he was never entitled to have as the Rule 11 of the Academy stipulates that no

fees, partial or full, will be refunded to candidate leaving the academy during the training period for any reason. Thus it was submitted that the

complainant got the complaint lodged on distorted facts which was never true as there had been no occasion on the part of the officials to

approach the complainant at Ranchi for taking Rs. 55,000/- before clearance of the medical test which was to be undertaken at Chennai and it is

only after clearance of the medical test admission is confirmed and then the balance amount of Rs. 55,000/- on account of tuition fees and other

fees is accepted and that it is evidently clear that the petitioner having left the institute with his own accord wanted to have the money returned to

him and when he was informed that he is not entitled to he got this case lodged with mala fide intention and hence on this ground alone the order

taking cognizance is fit to be set aside. Learned Counsel further submits that order taking cognizance is also bad on other counts as the facts given

In the complaint do not constitute any offence either u/s 384 or 420 of the Indian Penal Code.

6. As against this, learned Counsel appearing for the opposite party No. 2 submits that there has been absolutely no illegality in the order taking

cognizance and hence, this application is fit to be dismissed.

7. Having heard learned Counsel for the parties and on perusal of the records, I do find much substance in the submission advanced on behalf of

the petitioners. It has been well settled that for attracting prosecution u/s 420 there are two essential ingredients which are as follows:

(I) Deceit, i.e., dishonest or fraudulent misrepresentation and

(II) Inducement for delivering property.

8. From the reading of the complaint petition as well as solemn affirmation, I do find that nothing is there to show that the petitioner No. 1 induced

with dishonest intention to part with the money for taking admission, rather it is a case of the complaint itself that on coming to know about the

advertisement issued by the institution on website he applied for taking admission in the course and that apart it is not the case of the complainant

that though there was advertisement but no such institution does exist nor does it imparting the course as has been advertised. Thus, I do find that

nothing is there in the case of the complainant that officials of the institute also induced the complainant to part with the money with dishonest

Intention. Therefore, no offence u/s 420 of the Indian Penal Code is made out.

9. So far as offence u/s 384 of the Indian Penal Code is concerned, that also does not seem to have been made out. For attracting the offence of extortion as

has been defined u/s 383 of the Indian Penal Code. Three ingredients are to be fulfilled which are as follows:

(i) accused must put any person in fear of any injury to that person or any other persons.

(ii) Putting of a person in such fear must be intentional.

(iii) The accused must thereby dishonestly induce the person so put in fear to deliver to any person any property or valuable security, or in any

signed or sealed which may be converted into a valuable security.

10. Coming to the case of the complainant it may be reiterated that it is the case of the complainant that when he declined to pursue the course he

was forced to write that he will not claim money back. I am afraid in the facts and circumstances even if the prosecution case is taken to be true,

this document by which the complainant has abandoned his claim can be termed to a valuable security within the meaning of Sections 30 of the

Indian Penal Code. Valuable security denote a document which is, or purports to be, a document whereby any legal right is created, extended,

transferred, restricted, extinguished or released. In this regard rules and regulation of the academy as has been annexed as Annexure 5/1 may be

referred to where it is stipulated that no fees, partial or full, will be refunded if any candidate is required to leave the Academy during the training

period for any reason. Therefore, when this right was from before the document which has been alleged to have been written by the complainant does

not create any legal right and, therefore, it cannot be termed as a valuable security. Furthermore, it is the case of the complainant that when he

expressed his inability to join the course he was confined and was forced to write a letter to the effect that he will not be claiming the refund of the

money. Even if this statement is also taken to be true, he cannot be said to have been put in fear of any injury and thereby no offence u/s 384 is

made out.

11. Accordingly, the order taking cognizance against the petitioners is quite bad and hence, order dated 14.6.2004 passed by the Judicial

Magistrate, Ranchi in Complaint Case No. 228 of 2004 whereby cognizance of the offence has been taken u/s 420 and 384 of the Indian Penal

Code against the petitioners is hereby set aside. Consequently, this application is allowed.