

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1975 OF 2013

Shivdani Prasad Mirji Prasad Kesarwani & Anr. ... Petitioners.

V/s.

The State of Maharashtra & Anr. ... Respondents.

CRIMINAL WRIT PETITION NO. 1976 OF 2013

Santosh Shivdani Prasad Kesarwani & Anr. ... Petitioners.

V/s.

The State of Maharashtra & Anr. ... Respondents.

None for the Petitioners.

Mrs. V.S. Mhaispurkar, APP for the State.

Mr. G. S. Jadhav i/by R. D. Suryawanshi for Respondent No. 2.

CORAM : M.L.TAHALIYANI,J.

DATE : 19 JANUARY, 2015

P.C. :

1 These two writ petitions arise out of the order passed by the Extra Joint Ad-hoc & Additional Sessions Judge, Thane, dismissing the criminal revision no. 147 of 2009. The revision application had arisen out of the order passed by the learned Judicial Magistrate, First Class, on 18th April, 2009 in CC No. 764/2008, directing issuance of process for the offence punishable under sections 498A, 406, 352, 323 and 341 read

with section 34 of the IPC against the present petitioner nos.1 and 2 in criminal writ petition no.1975 of 2013 and petitioner nos. 1 and 2 in criminal writ petition no.1976 of 2013. A criminal complaint was filed by respondent no.2 against all the petitioners and her husband - Kanhaiyalal Kesarwani. Kanhaiyalal Kesarwani had challenged the order of the learned Magistrate before the Sessions Court. The Sessions Court dismissed the Revision Application.

2 Accused no.1 Kanhaiyalal Kesarwani has not filed any writ petition. Rest of the four have filed these two writ petitions against the order of the Sessions Court. Respondent No.2 has stated in her complaint before the learned Magistrate that her marriage with accused no.1 was solemnized on 18th of May, 2001 and she was staying with accused no. 1 and the applicants (family members of the accused no.1) in a joint family. Her grievance was that she was never given love and affection by accused no. 1 and the applicants. She was bluntly told by the accused no. 1 on 5th day of marriage that he did not love her. It is alleged that the accused no.1 and the applicants used to cause mental and physical torture to her. It is further alleged that the applicants used to instigate accused no. 1 by making false allegations against respondent no.2. They used to keep on quarreling unnecessarily without any fault on her part. The allegations in details have been described in paragraph nos. 9,10 and 11 of the complaint. It is further

alleged that on 14th December, 2007 the accused no. 1 told respondent no.2 that he wanted the respondent no. 2 only for children and that he had no love and affection for her. On next morning, he picked up quarrel with respondent no. 2 and abused her in filthy language.

3 After having gone through the complaint and the verification statement of the complainant and particularly after taking into consideration the incident dated 15th December, 2007 when the accused no. 1 had committed trespass at the house of the maternal uncle of respondent no. 2 and had quarrelled with him; the learned Magistrate had issued process for the above stated offence. As already stated, the revision application filed had been dismissed. These two writ petitions challenged the order passed by the Sessions Judge. Having gone through the complaint and the order passed by the Magistrate and the Sessions Judge; in my opinion, there was sufficient material to proceed against the applicants and the accused no. 1. Therefore, the process had been issued rightly by the learned Magistrate. There is no infirmity in the orders passed by the courts below. There are no merits in both the petitions.

4 Both the writ petitions are, therefore, dismissed. Interim orders stand vacated.

5 The parties shall appear before the trial court on 06.02.2015. The learned trial court shall proceed with the criminal case in accordance with law.

(JUDGE)

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