

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 540 OF 2001

Uday Ashok Dahanukar
Age : 38 years, Occ. Business
R/o. C/o. Chinmay Vaidya, Advocate
No.8, Lawyer's Chamber
District Court, Shivaji Nagar
Pune-411 005.

.....Petitioner

: V E R S U S:

1. Amulya Avinash Dahanukar
Age : 37 years, Occ : Business
R/o. 37/10+15, 7th Cross Lane,
Off. Prabhat Road,
Pune-411 004.

2. Sameer Sudhakar Nagarkar
Age : 31 years, Occ. Business
R/o. 1204/12, Shivaji Nagar,
Pune-411 005.

3. Pankaj Avinash Dahanukar
Age : 31 years, Occ. Business

4. Avinash Wamanrao Dahanukar
Age : 61 years, Occ. Business

.....Name of respondent no.4
deleted as per order dtd.
11/2/16 in Cri. Application
No. 17 of 2016

5. Madhavi Pankaj Dahanukar
Age : 29 years, Occ. Business

6. Sheela Avinash Dahanukar
Age : 58 years, Occ. Business

Rane

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WP-540-2001.doc
(sr. no.204)
Thursday,18.2.2016

Nos.3 to 6, residing at
R/o. 37/10+15, 7th Cross Lane,
Off. Prabhat Road,
Pune-411 004.

6. The State of Maharashtra

.....Respondents
.....(No.1 Orig.Accused No.4,
Nos.2 to 6, Orig. Accused
Nos.1 to 3 and 5 and 6)

* * * * *

Mr. Ashok Tajane, Advocate for the petitioner.

Mr. Deepak Thakare, APP for State.

Coram :- Smt. R.P. SondurBaldota, J.

18th February, 2016.

JUDGMENT :-

1). This petition by the original complainant challenges the order dated 03rd February, 2001 by which the Sessions Court allowed Revision Application No. 646 of 2000 and set aside the order of issuance of process in Regular Criminal Case No. 96 of 2000 for the offences punishable under Sections 120B and 409 Indian Penal Code against respondent no.1. The petition was filed on 10th April, 2001. By the order dated 7th March, 2002 notices were issued to the respondents and

further proceedings in Regular Criminal Case No. 96 of 2000 were stayed. The petition was thereafter admitted on 23rd August, 2006 and the ad-interim stay continued. Thus, on the petitioner's own application, his complaint has been stayed for the last 14 years.

2). In the year 2000, the petitioner filed Complaint No. 96 of 2000 against six persons out of which five are his family members alleging offences punishable under section 120B and 409 Indian Penal Code. The facts alleged by the petitioner are that, respondent no.2 was his Constituted Attorney. He had filed caveat applications in the Court of Small Causes at Pune and in the Court of Civil Judge Junior Division, Pune. Filing of the caveats was without the knowledge of the petitioner. Later, two suits came to be filed on behalf of the partnership firm of which the petitioner is a partner and another by one, Indu Dahanukar against him for various reliefs. According to the petitioner, soon thereafter, the respondents conspired with each other and compromise decrees were passed which were signed by the Constituted Attorney on behalf of the petitioner. The compromise decrees have resulted in ousting the petitioner from the partnership business, as well as, residential premises causing loss to him of crores of rupees. Therefore, he filed the criminal complaint herein. The petitioner has already filed three suits challenging the three consent decrees. The Sessions Court, on

appreciation of the facts of the case, has observed that there is neither any entrustment of property nor any misappropriation involved in the matters. Besides, respondent no.1 was not a party to any of the suits and no evidence of conspiracy against respondent no.1 was available on record.

3). Mr. Tajane, the learned Advocate appearing for the petitioner submits that the circumstances against respondent no.1 are that, he is a partner in the partnership firm, he is the member of the family and thirdly, he is the friend of the Constituted Attorney of the petitioner. It is the argument of Mr. Tajane that, the liability of respondent no.1 is joint and several being a partner of the partnership firm. Such joint and several liability of respondent no.1 can be only in relation to any civil proceedings or transactions, qua the partnership firm. It cannot be extended to criminal proceedings. Therefore, the fact of respondent no.1 being a partner of the partnership firm is irrelevant for the complaint filed. Similarly, the fact that Constituted Attorney of the petitioner is a friend of respondent no.1 is not relevant for the complaint. Besides that by itself, is not sufficient to lead an inference of conspiracy unless the petitioner alleges further specific facts disclosing, *prima-facie*, the involvement of respondent no.1 in the conspiracy and the offence of criminal breach of trust by an agent. Hence, it has rightly

been observed by the learned Sessions Judge that, there is neither any entrustment of the property nor any misappropriation involved in the matter. As there is no infirmity in the impugned order, the petition is dismissed. At the request of Mr. Tajane, the interim order operating in the petition of stay of criminal proceedings is extended for a period of 8 weeks from today.

(SMT. R.P. SONDURBALDOTA, J)