

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1374 OF 2014

Mrs. Usha Chintamani Dwivedi. ... Petitioner.
Versus
Mrs. Suhasini Varun Dwivedi & ors. ... Respondents.

Ms. Bhaglaxmi Racha h/f. Mr. J.P. Singh, advocate for petitioner.

Mr. A.R. Patil, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JUNE 8, 2016

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned
APP for State. Perused the papers.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The Petitioner herein happens to be the mother-in-law of the
respondent No. 1. The respondent No. 2 happens to be mother of the

respondent No. 1. The Petitioner herein filed a complaint against the respondent No.1 before the Court of Judicial Magistrate First, Vasai alleging therein that the respondent No. 1 had committed breach of trust. It is alleged in the complaint that the son of the petitioner got married with the respondent No. 1 on 10th May, 2009. According to the Petitioner, she had golden and silver ornaments, which were gifted by her mother-in-law. She had kept the said ornaments in her flat at Vasai, which was occupied by her son and daughter-in-law. According to her, when her son was not at home, the respondent No.1 had stolen the ornaments from the house and that all the accused i.e. respondent No. 1 and the parents of the respondent No. 1 had misappropriated her golden and silver ornaments. She had further alleged that the cupboard which she had left in Vasai flat was also missing. According to her, on 1st October, 2010 respondent No. 1 had sent her SMS that ornaments are with her and she may receive the same whenever she wants. According to the complainant, the respondent No. 1 had committed breach of trust.

4 The learned Judicial Magistrate First Class, Vasai by an order dated 5th August, 2011 has called for report under Section 202 of the Code of Criminal Procedure, 1973. Thereafter, by an order dated 31st October, 2011 the learned Magistrate had issued process against the present respondent Nos. 1 and 2 for having committed an offence punishable under Section 406 of the Indian Penal Code.

5 The respondent being aggrieved by the order of issuance of process had filed Criminal Revision Application No. 19 of 2013 before the Court of Additional Sessions Judge, Vasai. The learned Additional Sessions Judge, Vasai by an order dated 16/11/2013 was pleased to allow the revision and thereby had quashed the orders of issuance of process against the accused.

6 Being aggrieved by the said order dated 16/11/2013, the Petitioner who happens to be the original complainant has filed the present Writ Petition in the year 2014. However, the said petition was prosecuted diligently and remained pending for almost 2 years.

7 Heard the learned Counsel for the Petitioner. Perused the record and proceedings. The learned Sessions Judge has rightly observed that in fact the respondent No. 1 had filed a complaint against the Petitioner and her son on 18/10/2010 alleging therein that they have committed offence punishable under Section 498A of the Indian Penal Code. That the respondent No. 1 was being harassed for unlawful demand. In any case, the complainant/petitioner has not made out a case of entrustment. Accordingly to the Petitioner, she has left the ornaments in the house occupied by the son and daughter-in-law. Moreover, it is stated in the complaint itself that the respondent No. 1 had sent her message that she should come and take away the ornaments. It appears that accordingly to the Petitioner, SMS was sent voluntarily. It is not stated as to whether the Petitioner had met the respondent No. 1 seeking return of the property as per the message received by her. No case of criminal breach of trust is made out. The Petitioner has neither given the valuation or the description of the ornaments which she had left in

her cupboard. The house was occupied by her son and daughter-in-law. The learned Sessions Judge has rightly observed that no prima facie case is made out for proceeding against the accused under Section 400 of the Indian Penal Code for want of averments in the complaint. The reasons assigned by the learned Sessions Judge are justifiable. The continuation of the said proceedings would be an abuse of process of law, since it appears to be matrimonial disputes between the son of the petitioner and the respondent No. 1. Moreover, the Petitioner herself is being prosecuted for the offence punishable under Section 498A of the Indian Penal Code. The said report was filed prior to initiation of the present complaint. In view of this, no interference is called for. Writ Petition being sans merits stands dismissed.

(SMT. SADHANA S. JADHAV,J)