

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1022 OF 2016**

Mrs. Usha Harendra Panalal Applicant

Power of Attorney for her son Original
Tanay Panalal Complainant

Vs.

1 Mr. Bharat Panalal Respondents
2 The State of Maharashtra

Mr. Anoop R. Pandey, Advocate for the Applicant.
Mr. S.R. Agarkar, A.P.P. for the respondent- State.

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

Date : 17th January, 2017

P.C.

1 This application filed under Section 482 of Cr.P.C. is by the original complainant, who had filed a private complaint being Case No.207/SW/2009 alleging offences punishable under Sections 403 and 406 Indian Penal Code against respondent no.1. The complaint was filed through his mother as his constituted attorney. The trial court had by it's order dtd. 6th February, 2010 directed investigation under Section 156(3) Cr.P.C. After which "C" summary came to be filed by the police. The trial court accepted the "C" summary and dismissed the complaint. Being aggrieved by the order, the

applicant had filed revision application to the Sessions Court. By the order dtd. 27th April, 2016, the revision application is dismissed. Therefore the applicant has approached this court.

2 The complainant is a regular resident of America. Pursuant to the Deed of Partition dtd. 26th March, 1970, the father of the applicant and his uncle respondent no.1 became the joint owners of the properties of “Parvati Mansion”, 'C' Block, Dada Bhadkamkar Marg, Mumbai. They also had 1/4th share each in the property of “Nizam Building”, Kalbadevi, Mumbai. The father of the applicant expired on 18th November, 1973. The complainant alleges that respondent no. 1 has been collecting rents from the tenants in the two buildings and also transfer money at the time of transfer of tenancies during the period 1970 to 2008. Whenever the complainant came to India, respondent no.1 had avoided to render accounts of the recoveries. However, as long as the grandmother of the complainant was alive, he had trusted respondent no.1 and did not demand for the detailed account. The grandmother expired on 30th September, 2009. It is alleged that after her death, respondent no.1 has illegally misappropriated the properties in the house and also the amounts collected from the tenants. The complainant had therefore called for the details of the movable properties in the house but respondent no.1 failed to give the same.

3 The courts below have noted that the complaint filed by the applicant is vague. Even during the course of the investigation, no details of misappropriation were provided by the applicant. The deficiencies noted specifically by the Sessions Court were in following terms :

“The respondent was called upon to give the rent collected from tenants onwards alongwith the accounts of taxes, premiums etc. No details of the dates and of the old tenants has been given in the complaint. Who, when and where the rent was collected is also not mentioned.

5 Two buildings Parvati Mansion and Nizam building were partitioned and only 50% of share was determined without effecting the portion by metes and bounds. The investigating officer carried out investigation but the particulars of rent premises, rent thereof, period of rent collected, mode of collection etc. are not given. More particularly which share falls in the share of the applicant is not disclosed.

6 The investigating officer recorded the statements of several tenants of rooms as well as the shops. They stated that the respondent did not collect rent from them. The allegations are made that the accused misappropriated the movable and immovable property and bank balance of grandmother including 30 kg. of silver. However, 30 kg. silver is not mentioned in the complaint. The tenant premises are not yet partitioned amongst Landlords as having more than one landlords.

7 The complaint is vague. Also in the investigation the details of misappropriation are not provided with. The complainant is not sure and even not disclosed which part of the properties belongs to her. There is no document to show that respondent no.1 was entrusted with the work of collection of rent. The period for which respondent no.1 collected rent is not given in statements or complaint. The particular point of time when the respondent refused to give account or to repay the rent collected is also not revealed in investigation.”

In the above circumstances, the courts below must be held to have correctly accepted “C” summary and dismissed the complaint.

4 It is patent from the contents of the complaint as well as report of “C” summary that filing of the complaint was a clear abuse of process of law by the applicant. Filing of the criminal proceedings was obvious intent to pressurise respondent no.1 to meet the demands of the applicant without having that demand adjudicated by adopting appropriate civil proceedings. For that purpose he has used the court and police machinery. The application therefore must be dismissed with heavy costs.

5 The application is dismissed with costs. The applicant shall pay costs of Rs.50,000/- by depositing the same

with Maharashtra Legal Services Authority. The costs to be paid within two weeks from today.

(Smt. R.P. SondurBaldota, J.)