

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

WRIT PETITION No. 3306 OF 2017

Mrs.Madhubala Kamal Singh Chauhan ...Petitioner

Versus

Mr.Pravin Kamal Singh Chauhan & Anr. ...Respondents

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Mr.Anil D. Joshi for the Petitioner.

Mr.Subodh Desai I/b.Mr.Akshay G. Petkar for Respondent No.1.

Mr.Vinod Chate, APP for Respondent No.2-State.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED : 28 JANUARY 2019**

P.C.:

1. This Petition is filed invoking the powers of this Court under Article 227 of the Constitution of India and under section 482 of the Criminal Procedure Code.

2. In this Petition, the petitioner, who is a step mother of respondent No.1-son, is challenging the order dated 28th November, 2016 passed by the learned 6th Addl. Chief Judicial Magistrate, Thane in O.M.A. No. 364 of 2016 thereby issuing process against the petitioner for the offence punishable under

section 420 of the Indian Penal Code so also the order dated 13th June, 2017 passed by the learned Addl. Sessions Judge 07, Thane thereby confirming the order of issuance of process in Revision Application No. 18 of 2017.

3. The learned counsel for the petitioner has submitted that the petitioner has right in the ancestral properties of her late husband, who is a father of respondent No.1-son. He has further submitted that out of love and affection, respondent No.1 -son had paid Rs. 45,00,000/- to the petitioner by executing a gift deed dated 23rd February, 2015. The two cheques dated 30th October, 2014 and 20th February, 2015 were issued for payment of Rs. 45,00,000/-. He has further submitted that respondent No.1-son has fraudulently claiming his right in respect of the landed properties of the petitioner's husband in lieu of the said gift of Rs. 45,00,000/-. He has further submitted that the petitioner has never intended to cheat respondent No.1-son when she accepted the gift of Rs. 45,00,000/-. He has further submitted that this is not a case to issue process against the petitioner especially when the learned Magistrate earlier in paragraph 5 of the order dated 5th August, 2016 had expressed that while registering the case and calling the

complainant for recording verification had refused to issue directions under section 156 (3) of the Code of Criminal Procedure. Subsequently, after verification, the learned Magistrate had taken contrary view and issued process under section 420 of the Indian Penal Code against the petitioner. He has further submitted that the petitioner filed a civil suit challenging the said gift deed because in the release deed respondent No.1-son has mentioned that the petitioner has relinquished her right in respect of the landed properties.

4. The learned counsel for respondent No.1- son while opposing this Petition, has supported the order of issuance of process and also the order passed by the learned Sessions Judge.

5. Considered submissions. Respondent No.1 -son has actually paid Rs. 45,00,000/- by a demand draft to the petitioner and the said amount is received by her. On the basis of this acceptance, it was agreed that certain family arrangements will take place and, therefore, both the parties have entered into an Agreement dated 23rd February, 2015 and they have settled their rights in respect of all the ancestral properties. However, the said release deed is

challenged by the petitioner in the Civil Court by filing Civil Suit No.86 of 2015 for declaration in respect of cancellation of the said Agreement. Therefore, respondent No.1-son filed a private complaint of cheating before the learned Magistrate.

6. Perused both the impugned orders. The learned Sessions Judge has concurrently held that *prima facie* case is made out from the complaint to issue process against the petitioner under section 420 of the Indian Penal Code. Perused complaint and the documents attached to the complaint. The fact of receiving an amount of Rs. 45,00,000/- pursuant to the gift deed dated 23rd February, 2015 is not disputed though the document is made out of love and affection as mentioned. The release deed and the other documents *prima facie* show that two transactions may be of different nature, but the fact remains that the petitioner has received an amount of Rs. 45,00,000/- for some settlement and subsequently that is withdrawn. Hence, the orders passed by the learned Magistrate and the learned Sessions Judge are legal and cannot be faulted with and they are maintained. Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)