

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4548 OF 2025**

Marie D Silva

..Petitioner

Versus

Venkatesh Raman Iyer & Ors.

...Respondents

Ms. Lakshmi Raman, for the Petitioner.

Mr. D J Haldankar, APP for the Respondent – State.

Mr. Amol Patankar, i/b Mr. Madan Yarge, a/w Mr.

Neilchandiwalla & Ms. Sakshi Naik, for the Respondent

Nos. 1 to 3.

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CORAM: N. J. JAMADAR, J.

DATE : 07th MARCH 2026

Oral Order:

1. Heard the learned Counsel for the parties.
2. The challenge in this petition is to an order dated 28th April, 2025 passed by the learned Additional Sessions Judge in Criminal Revision Application No. 103/2024, whereby the order of issuance of process against the Respondent Nos. 1 to 3 for an offence punishable under Section 379 of the Indian Penal Code, came to be set aside.
3. Olinda, was the sister of the petitioner. Olinda passed away on 20th May, 2021. Olinda was married to Mr. Venkatraman, who had pre-deceased Olinda. The Respondent Nos. 1 to 3 claimed to be the legal heirs of Mr. Venkatraman.
4. The petitioner initially lodged a report with the Police that, after the demise of Olinda, the Respondents had changed the

lock to the house premises and removed the belongings of the Olinda from the said house premises. As the Police, after inquiry, refused to register the FIR and opined that the dispute appeared to be of civil nature, the petitioner lodged a private complaint before the learned Magistrate.

5. The verification statement of the petitioner was recorded on 10th March, 2022. After perusal of the verification statement and the material on record, by an order dated 04th July, 2023, the learned Magistrate issued process against Respondent Nos. 1 to 3 for an offence punishable under Section 379 of the IPC 1860, only.

6. Being aggrieved, the Respondent Nos. 1 to 3 preferred a revision before the Court of Session. By the impugned order the learned Additional Sessions Judge was persuaded to allow the revision taking into account the Court Commissioner's report which contained an inventory of the articles found in the house of Olinda, and the custody of the keys of the cupboards which were kept in the house of Olinda. The learned Additional Sessions Judge was of the view that, since there were disputes between the parties leading to the filing of a testamentary petition and a civil suit, and the petitioner and Respondent Nos. 1 to 3 were laying claims over the property left behind by

Olinda, the contentious issues were required to be determined in the civil proceedings and, *prima facie*, no offence under Section 379 of the IPC was made out.

7. Ms. Lakshmi Raman, the learned Counsel for the petitioner submitted that, the revisional court exceeded the jurisdiction in setting aside the order of issuance of process passed by the learned Magistrate, by taking into account the Court Commissioner's report. The learned Additional Sessions Judge ought to have confined the inquiry to the legality and correctness of the order impugned before him on the basis of the averments in the complaint, the documents placed on record by the complainant and the verification statement. It was not open for the learned Additional Sessions Judge to take into consideration the Court Commissioner's report and interfere with the order passed by the learned Magistrate. Reliance was placed on the judgment of the Supreme Court in the case of *Helios Vs. Matheson Information Technology Ltd. & Ors. Vs. Rajeev Sawhney & Anr.*¹.

8. In opposition to this, Mr. Patankar, the learned Counsel for Respondent Nos. 1 to 3, would urge that, the learned Additional Sessions Judge has correctly exercised the revisional

1 2012 1 SCC 699

jurisdiction to set aside the order passed by the learned Magistrate, as no *prima facie* case for an offence under Section 379 of the IPC, 1860 was made out. Taking the Court through the proceedings instituted by the petitioner and report of the police, post inquiry into the complaint lodged by the petitioner, it was submitted that, vague allegations were made in the complaint. In fact, in the earlier complaint, the list of the items which were allegedly stolen was not furnished. Thus, no interference is warranted in the impugned order.

9. The material on record indicates that, Olinda passed away on 20th May, 2021. The petitioner claimed to have visited the house premises of Olinda on 30th May, 2021, and, at that point of time, found that the lock to the door of the house of Olinda was changed. In her verification statement, the petitioner refers to the fact that, on 30th May 2021 when she visited the house of Olinda, she found that the lock was changed. The verification statement, in a sense, stops at that. The petitioner did not further allege that, the particular items of the property were stolen from the house of Olinda. Secondly, the Court finds that, in the complaint which was lodged with the Police on 21st June 2021, a mere suspicion was expressed that, the Respondent Nos. 1 to 3 might have stolen the property.

10. It is in the aforesaid context, the report of the Court Commissioner was appreciated by the learned Additional Sessions Judge. Some of the items of the property which were allegedly stolen were, in fact, found in the premises and have been noted in the Court Commissioner's report. It further records that, out of the four cupboards in the house, the keys of the three cupboards were with the petitioner.

11. In these circumstances, the learned Additional Sessions Judge was justified in interfering with the order of issuance of process. *Prima facie*, the material on record does not indicate that, the offence of theft was made out. As the complaint was lodged on the basis of suspicion, and, subsequently, some of the items of the property which were allegedly stolen were indeed found in the premises, the learned Additional Sessions Judge was within his rights in interfering with the order passed by the learned Magistrate. Thus, in exercise of the supervisory jurisdiction, this Court does not find any reason to interfere with the impugned order.

12. The Writ Petition stands dismissed.

[N. J. JAMADAR, J.]