

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 767 / 2017

Smt. Champa W/o Shri Roop Shyam @ Roop Lal D/o Late Shri Shiv Chand Ojha, Aged About 42 Years, Resident of Mata Ji Temple Road, Osiya, Dist. Jodhpur.

----Petitioner

Versus

1. The State of Rajasthan Through Public Prosecutor.

2. Roop Shyam @ Roop Lal S/o Shri Goverdhan Lal

3. Goverdhan Lal S/o Shri Panna Lal (Since Deceased)

4. Smt. Birju Devi W/o Shri Goverdhan Lal, All by Caste Brahman, Resident Sikhwalo Ka Bass, Nahro Ka Dhada, Merta City, Dist. Nagour. At Present Shiv Colony, Tower Road, Gadi Maliyan, Subhash Nagar, Ajmer.

----Respondents

For Petitioner(s) : Mr. Jhamak Nagda

For Respondent(s) : Mr. Deepak Choudhary, P.P.

Dr. Shailendra Kala

HON'BLE MR. JUSTICE SANDEEP MEHTA

Order

20/02/2018

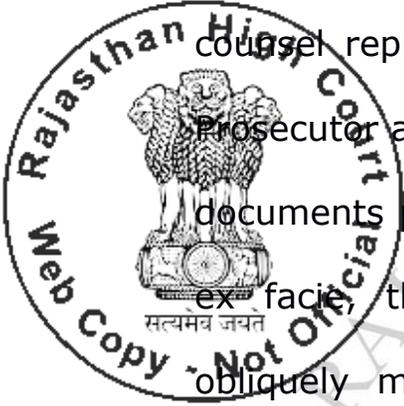
By way of the instant petition under Section 482 CrPC, the complainant petitioner Smt. Champa has approached this court for challenging the order dated 28.11.2016 passed by learned ASJ, Jodhpur District in revision affirming the order dated

20.07.2010 passed by the Judicial Magistrate, Osian, whereby the FR No.10/2002 submitted by the police after investigation of the FIR No.47/2002 lodged by the petitioner was accepted. The complainant lodged the above FIR with an allegation that she had previously filed an FIR dated 26.03.1996 for the offence under Section 498-A IPC against her father-in-law. During the course of investigation of the said FIR, the community members intervened and the complainant's household articles were collected and placed in a room at her matrimonial home and the key thereof was handed over to her. The complainant was assured that she would be paid a sum of Rs.500/- per month as maintenance. However, the accused did not abide by the terms and conditions of the said settlement and access denied to the complainant of the questioned room. With these allegations, the petitioner lodged the fresh FIR No.47/2002 against the accused persons at the Police Station Osian. The police, thoroughly investigated the matter and came to a conclusion that the goods of the complainant were lying in the same room and the complainant was free to collect the same. She lodged the FIR in vindictive manner and to wreak vengeance on the accused persons. Accordingly, a negative final report was submitted in the court concerned. The petitioner filed a protest petition and got the statements of herself and her witnesses recorded under Section 200 and 202 CrPC. The learned Magistrate, however, refused to issue process against the accused and dismissed the protest petition while accepting the negative final report by the order



dated 20.07.2010, which was also affirmed in revision as stated above.

Having heard and appreciated the arguments advanced by learned counsel Mr. Jhamak Nagda, learned counsel representing the petitioner and Dr. Shailendra Kala, learned counsel representing the respondents, as well as learned Public Prosecutor and after going through the impugned orders and other documents placed on record, this court is of the firm opinion that *ex-facie* the FIR lodged by the petitioner complainant was obliquely motivated and was filed with the sole intention of wreaking vengeance against the respondents. There was not even an iota of truth in her allegations. The alleged settlement under which, the complainant's articles were placed in the disputed room and the key provided to her took place way back in the year 1996. The FIR at hand came to be lodged after nearly six years. Manifestly, the allegations levelled by the complainant do not give rise to the necessary ingredients of the offences under Sections 406 and 420 IPC. If at all, the complainant apprehended that the accused had taken control of her stridhan articles, which were locked inside the said room, then the offence would be that of theft, for which the criminal proceedings could only be initiated within three years as per Section 468 CrPC. The two courts of competent jurisdiction have recorded concurrent findings of facts in the impugned orders while rejecting the protest petition submitted by the petitioner and as well as the revision preferred against the said order. Hence, this court would be loathe to



interfere in the concurrent findings recorded by the courts below while exercising its inherent powers under Section 482 CrPC. As an upshot of the above discussion, the instant miscellaneous petition is dismissed as being devoid of merit.

(SANDEEP MEHTA), J.



RAJASTHAN HIGH COURT



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