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

CRIMINAL REVISION APPLICATION NO.182 OF 2015

Gaurav Balwant Khanna

...Applicant

Versus

The State of Maharashtra and Ors.

...Respondents

Mr.Robin Jaisinghani a/w J.D'silva, for the Applicant

Ms.R.V.Newton, A.P.P for the Respondent-State

Mr.Nitin Sejpai a/w Ms.Pooja N. Sejpai, for the Respondent Nos.2 to 4.

CORAM : REVATI MOHITE DERE, J.

DATE : 17th JUNE, 2016

P.C. :

1. Heard learned Counsel for the applicant and learned counsel for respondent nos.2 to 4 and learned APP.
2. Rule. Rule is made returnable with the consent of the parties and is taken up for final hearing forthwith. Learned APP waives service on behalf of Respondent – State.
3. By this application, the applicant has impugned the Judgment and Order dated 30th January, 2015, passed by the learned Additional

Sessions Judge, Raigad-Alibag in Criminal Revision Application No.117 of 2014, by which the order of process dated 14th October, 2014, issued by the learned Judicial Magistrate First Class, Pen, in Regular Case No.91 of 2014 against the respondent nos.2 to 4, for the offence punishable under Sections 379, 387 r/w Section 34 of the Indian Penal Code, came to be quashed and set aside and consequently the proceedings came to be dropped.

4. Mr.Jaisinghani, learned counsel for the applicant submitted that the learned Judge, has erred in law by quashing the order issuing process essentially on the premise that the said order was without reasons. He submitted that the learned Judge had infact observed in paragraph 15 of the impugned order, that the allegations disclosed in the complaint falls directly within the purview of Section 395 of the Indian Penal Code and that the same was exclusively triable by the Court of Sessions. He submitted that thus, even the learned Judge was of the opinion that there was a *prima facie* case made out as against the respondents. Mr.Jaisinghani relied on the Judgment of the Apex Court in the case of ***Dy.Chief Controller of Imports & Exports v/s Roshanlal Agarwal and Others***¹, in

1 (2003) 4 SCC 139

support of his submission to show that no reasons are required to be given by the Magistrate issuing process.

5. Mr.Sejpal, learned counsel for the respondent nos.2 to 4 opposes the application. He submitted that there was no infirmity in the impugned order passed by the learned Additional Sessions Judge, Raigad-Alibag in Criminal Revision Application No.117 of 2014, quashing the order of process. He submitted that if at all the matter is being remitted back, the same ought to be remanded from the stage of Section 200 of the Code of Criminal Procedure, i.e. from the stage of recording of the verification.

6. Perused the papers. A private complaint was filed by the applicant on 16th August, 2014, in the Court of the learned Judicial Magistrate First Class, Pen, as against respondent nos. 2 to 4. Pursuant thereto, the learned Magistrate recorded the applicant's verification under Section 200 of the Code of Criminal Procedure on 14th October, 2014. The learned JMFC, Pen, after recording the verification was pleased to pass the following order:-

“On perusal of the verification of the complainant Gaurav, there appears a prima facie case, which can be tried against the accused for the accusation punishable under section 379 and 387 read with section 34 of the Indian Penal Code. Hence, issue process against the accused Nos.1 to 3 for the offence punishable under sections 379 and 387 read with section 34 of the Indian Penal Code. Returnable on 30/12/2014.”

7. Being aggrieved by the aforesaid order issuing process, the respondent nos.2 to 4 challenged the same in Revision, before the learned Additional Sessions Judge, Raigad-Alibag, by filing Criminal Revision Application No.117 of 2014. The learned Additional Sessions Judge after hearing the parties was pleased to pass the impugned order dated 30th January, 2015. From a perusal of the order dated 30th January, 2015, it appears that the learned Judge was pleased to allow the revision, essentially on the premise, that the learned Magistrate ought to have recorded reasons for issuing process and observed that the issue of process being without reasons was erroneous and could not be sustained in the eye of law. Infact, in paragraph 15 of the Impugned Order, the learned Judge has observed that the allegations put forth by the applicant (original complainant) falls under section 395 of the Indian Penal Code, which is

exclusively triable by the Court of Sessions and that the Magistrate has not considered this aspect. The Apex Court in the case of ***Dy.Chief Controller of Imports & Exports (supra)*** has observed in para 9 as under:-

“9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. **At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.** This question was considered recently in ***U.P. Pollution Control Board v. Mohan Meakins Ltd.*** and after noticing the law laid down in ***Kanti Bhadra Shah v. State of W.B.***, it was held as follows:-
(SCC p.749, para 6)

The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. **There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.”**
(emphasis supplied)

8. Infact, in the aforesaid case i.e. in the case of ***Dy.Chief Controller of Imports & Exports (supra)***, the order passed by the learned

Magistrate, read thus:-

“Cognizance taken. Register the case.
Issue summons to the accused.”

It is pertinent to note that, the Apex Court, after considering the said order had observed that process issued to the accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.

9. In the present case, the learned JMFC has passed the order as is reproduced in para no.6 of this Order. Considering that the impugned order is essentially based on the premise, that reasons ought to have been recorded by the learned Magistrate while issuing process, the same cannot be sustained in law in the light of the judicial pronouncements in this regard. Since the Revision preferred by the Respondent Nos.2 to 4 is allowed essentially on this ground, it would be appropriate in the interest of justice, to quash and set aside the impugned order and to remit the matter back to the learned Sessions Judge for deciding the revision application, on its own merits, in accordance with law.

10. Accordingly, the application is allowed on the aforesaid terms and the Judgment and Order dated 30th January, 2015, passed by the learned Additional Sessions Judge, Raigad-Alibag in Criminal Revision Application No.117 of 2014 is quashed and set aside. The Criminal Revision Application No.117 of 2014 is restored to its original file. The learned Sessions Judge shall now decide the said application on its own merits, in accordance with law.

11. Rule is made absolute on the above terms and is disposed of accordingly.

12. It is made clear, that this Court has not gone into the merits of the said case and all contentions of the parties are expressly kept open save and except the ground on which this application is allowed.

13. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.