

*shivgan*FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.454 OF 2015

WITH

CRIMINAL APPLICATION No.455 OF 2015

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.B.D.Joshi, Advocate for the Applicants.

Smt. Anamika Malhotra, APP for the State.

Mr. A.H.Ponda H. & Dixit i/by M & M Legal Ventures, Advocates
for R.No.2.

CORAM : A.S.GADKARI, J.

DATE : 4th July, 2016

P.C.

1) Both the present applications filed under Section 482 of the Code of Criminal Procedure, 1973 have challenged the judgment and order dated 1.4.2015 passed in Revision Application Nos.630 of 2012 and 631 of 2012 respectively dismissing the said revision applications and confirming the order dated 21.5.2012 passed by the Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai, issuing process under Section 500 read with 34 and 120B of the Indian Penal Code against the applicants by the Additional Sessions Judge, Greater Mumbai.

2) Heard learned counsel for the applicant and the learned counsel for the respondents.

3) The learned counsel for the applicants submitted that from the complaint filed before the learned Additional Chief Metropolitan Magistrate, it is apparent from the cause-title itself that the applicants herein were not residing within the territorial jurisdiction of the concerned magistrate and hence, it was incumbent upon the magistrate to pass an order under the proviso to Section 202 of the Code of Criminal Procedure directing an enquiry into the matter as the applicants herein were residing at the place beyond the area in which the the concerned magistrate exercises its jurisdiction and ought to have postponed the issuance of process. In support of his contention, he produced roznama pertaining to the said case i.e. Criminal Case No.736/SS/2012. It is clear from the roznama that on 14.5.2012 the learned magistrate recorded the verification statement and also heard arguments for issuance of process and immediately on 21.5.2012 passed the impugned order of issuing process.

4) The learned counsel appearing for the respondent no.2 conceded to the said fact and submitted that as a matter of fact, the learned magistrate ought to have complied with the provisions of Section 202. He further on instructions submitted that the impugned order dated 21.5.2012 issuing process is passed without following the procedure as

contemplated under Section 202 of the Code of Criminal Procedure and therefore, it be set aside and the matter be remanded to the learned Magistrate for hearing it afresh.

5) In view of the aforesaid fact and the statement made by Mr. Ponda the learned counsel for the respondent no.2, the Order dated 21.5.2012 passed by the learned Additional Chief Metropolitan Magistrate 8th Court, Esplanade, Mumbai and the Judgment and Order dated 1.4.2015 passed in Revision Application Nos.630 of 2012 and 631 of 2012 passed by the Additional Sessions Judge, Greater Bombay are hereby quashed and set aside.

6) The Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai seized of the Criminal Case No.736/SS/2012 is hereby directed to hear the matter afresh and pass appropriate orders as per the provisions of law. It is needless to mention that all the contentions of the respective parties are kept open.

7) Applications are allowed in the aforesaid terms.

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

(A.S. GADKARI, J.)