

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**

**CRIMINAL APPLICATION (APL) NO. 89 OF 2016**

(MANOHARRAO SHYAMRAO KADU...VS..HEMANTHHAI PRABATBHAI PATEL & ANR)

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 Office Notes, Office Memoranda of Coram,  
 appearances, Court's orders of directions  
 and Registrar's orders  
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Court's or Judge's orders

**CORAM : Z.A.HAQ, J.**

**DATED : APRIL 13, 2016.**

Heard Shri A.C.Dharmadhikari, advocate for the applicant and Shri N.B. Jawade, A.P.P. for the non-applicant No.2.

The applicant had filed Criminal Application (APL) No. 699 of 2015 before this Court praying that the proceedings filed by the non-applicant No.1 be quashed. This Court disposed of Criminal Application (APL) No. 699 of 2015 by the following order :

*“Admittedly, the applicant has not challenged the order issuing process and has directly approached this Court under Section 482 of Cr.P.C.*

*In view of decision of the apex Court in Urmila Devi. vs. Yudhvir Singh; 2013(15) SCC 624, Criminal Application No. 699/2015 is disposed of with liberty to the applicant to file appropriate proceeding.”*

The applicant has now approached this Court with a prayer that the order directing issuance of process be quashed.

Shri N.B. Jawade, learned A.P.P. has raised objection that in view of the order passed by this Court on 16<sup>th</sup> December, 2015 the present application need not be entertained.

Shri A.C. Dharmadhikari, learned advocate for the applicant has submitted that earlier application filed by the applicant was disposed of by this Court as the order passed by the Magistrate directing issuance of process was not challenged and liberty was granted to the applicant to file appropriate proceedings and in view of the liberty granted by this Court the applicant is entitled to file this application under Section 482 of the Code of Criminal Procedure to challenge the order passed by the learned Magistrate. It is submitted that it is open for the applicant either to approach the Sessions Court by filing revision or to file application under Section 482 of the Code of Criminal Procedure before this Court. In support of this submission, the learned advocate has relied on the judgment given in the case of *Urmila Devi vs. Udhvir Singh*, reported in **(2013) 15 SCC 624**.

The entitlement of the applicant to approach this Court under Section 482 of the Code of Criminal Procedure to challenge the order passed by the learned Magistrate directing issuance of process cannot be disputed. However, in the present case, the point is that this Court having earlier declined to entertain the application under Section 482 of the Code of Criminal Procedure directly, whether the applicant can now be permitted to prosecute the present application ?

The learned advocate for the applicant has submitted that this Court has not refused to entertain the application under Section 482 of the Code of Criminal Procedure in the matter, but as the order directing issuance of process was not challenged the application was disposed of and liberty was granted to the applicant to file appropriate proceedings. This submission cannot be accepted in view of the tenor of the order.

Though the proposition laid down in the judgment referred by the learned advocate for the applicant supports the legal submission made on behalf of the applicant, it does not help the applicant in the facts of the case.

This Court recorded that the applicant has directly approached this Court under Section 482 of the Code of Criminal Procedure and liberty was granted to the applicant to file appropriate proceedings. The learned advocate for the applicant has not been able to point out that the request was made seeking permission to amend the application which was filed earlier to incorporate challenge to the order passed by the Magistrate directing issuance of process and it was not considered.

On overall assessment of the matter, I am of the view that it would not be proper to entertain the present application under Section 482 of the Code of Criminal Procedure overlooking the order passed by this Court in Criminal Application (APL) No.699 of 2015 on 16th December, 2015.

The application is disposed of accordingly.

The merits of the challenge raised by the applicant are not examined. It would be open to the applicant to file appropriate proceedings, if so advised.

The description of the non-applicant No.2 is not properly shown and in spite of the fact that office has pointed out objection, no steps have been taken to rectify the mistake. The applicant shall deposit Rs.Two Thousand with the High Court Legal Services Sub-Committee, Nagpur and produce receipt on the record within two weeks.

JUDGE

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