

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

**WRIT PETITION NO. 4474 OF 2017**

M/s. AB Insurance Broker Pvt. Ltd. & Ors. ....Petitioners  
Versus  
The State of Maharashtra & Anr. ....Respondents

**WITH  
WRIT PETITION NO. 4475 OF 2017**

M/s. AB Capital & Ors. ....Petitioners  
Versus  
The State of Maharashtra & Anr. ....Respondents

**WITH  
WRIT PETITION NO. 4476 OF 2017**

RBD Insurance Broking Service Pvt. Ltd. & Anr. ....Petitioners  
Versus  
The State of Maharashtra & Anr. ....Respondents

Mr. Sujay Kantawala, Mr. Ashish Chavan, Mr. Brijesh Pathak and  
Mr. Kartik Vig for the petitioners.  
Mr. V.V. Gangurde, APP for the State in WP 4474 & 4475 of 2017  
Mr. H.J. Dedhia, APP for the State in WP 4476 of 2017  
Mr. Amey Deshpande for respondent no.2 in all petitions.

***CORAM : SMT. ANUJA PRABHUDESSAI, J.  
DATE : 09<sup>th</sup> NOVEMBER, 2017***

**P.C. :**

1. The petitioners herein have challenged the orders dated 27<sup>th</sup> July, 2017 in Complaints No.301/SW/2016, 303/SW/2016 & 302/SW/2016 respectively whereby the learned Metropolitan Magistrate, 17<sup>th</sup> Court,

Borivali, Mumbai had issued process for offences punishable under Sections 406, 420, 468, 471, 120B r/w. Section 34 of the Indian Penal Code in each of these cases.

2. It is not in dispute that the petitioners have alternative efficacious remedy of filing a revision application before the Sessions Court. The petitioners have approached this Court without availing of the alternative remedy. There can be no dispute that despite the existence of alternative remedy, it is within the jurisdiction of the High Court to grant relief in writ jurisdiction or in exercise of inherent powers. In ***State Of H.P. And Ors v/s. Gujarat Ambuja Cement Ltd. and Anr. JT 2005 (6) SC 298 decided on 18 July, 2005*** a three Judge Bench of the Apex Court, after considering the previous judgments has held that :-

*“10. ....the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.*

11. ....

12. ....

13. In *Harbans Lal Sahnia v. Indian Oil Corporation Ltd.*, [2003] 2 SCC 107, this Court held that the rule of exclusion of writ

*jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the case and then may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the fundamental rights; where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. ”*

3. In the instant case, Mr. Brijesh Pathak, learned counsel for the petitioners justifies invoking writ jurisdiction of this Court on the ground that the petitions involve serious questions of law. Needless to state that these questions of law can be raised before the Sessions Court. In my considered view, this is not a case which warrants exercise of writ jurisdiction when the petitioners have alternative efficacious remedy.

4. Hence, without going into the merits of the matter, writ petitions are dismissed with liberty to the petitioners to file a revision application before the Sessions Court alongwith an application for condonation of delay, if necessary.

**(SMT. ANUJA PRABHUDESSAI, J.)**