

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1718 OF 2017

1. Medha W/o Arun Bhaskaran,
Age : 62 years, Occu. Pensioner,
2. Leela W/o Late Vasant Deshmukh,
Age : 85 years, Occu. Pensioner,

Both R/o Deshmukhwadi, Sarjepura,
Ahmednagar, Dist. Ahmednagar. ... **Petitioners**

Versus

1. Anupama D/o Siddheshwar Bhanage,
Age : 50 years, Occu. Advocate,
2. Prasad S/o Siddheshwar Bhanage,
Age : 42 years, Occu. Business,

Both R/o Parnakuti, Deshmukhwadi,
Ahmednagar, Dist. Ahmednagar.
3. The State of Maharashtra,
Through P.I. Tofkhana Police Station,
Ahmednagar. ... **Respondents**

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Mr. R.S.Shinde h/f Mr. V.P.Latange, Advocate for
Petitioners.

Mr. A.M.Gholap, Advocate for Respondent Nos.1 & 2.

Mr. A.R.Kale, APP for Respondent-State

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CORAM : MANGESH S. PATIL, J.

DATE : 04.07.2018

ORAL JUDGMENT :-

Rule. Rule is made returnable forthwith. With the

consent of both the sides, the matter is heard finally at the stage of admission.

2. The FIR was registered at the instance of Respondent Nos.1 and 2 on a private complaint filed by them for the offences punishable under Sections 427, 447 read with Section 34 of the Indian Penal Code (hereinafter referred to as 'IPC'). Since they were not content with the sections included in the FIR they filed Criminal Miscellaneous Application No.558 of 2017 and solicited a direction of the learned Magistrate under Section 156 (3) of the Cr.P.C. so as to include the offences punishable under Sections 379 and 395 of the IPC. The learned Magistrate refused to entertain the request and rejected it by the order dated 19.06.2017.

3. Being aggrieved by the order of learned Magistrate, Respondent Nos.1 and 2 preferred Criminal Revision Petition No.158 of 2017 before the learned Additional Sessions Judge. The learned Additional Sessions Judge by the order dated 29.09.2017 allowed the revision and directed a cognizable offence to be registered as was

prayed for by Respondent Nos.1 and 2. The petitioners who are the accused were not made party to the Criminal Revision and being aggrieved by the order have come before this Court seeking intervention under Article 227 of the Constitution of India.

4. It is quite apparent that in disregard to the provision of Sub Section 2 of Section 401 of the Cr.P.C. which mandates the suspect to be heard before deciding the Revision the petitioners were not made parties to that Revision. The learned Additional Sessions Judge has committed an error which goes to the root of the jurisdiction. He could not have entertained the Revision in the absence of the suspects before him. Suffice for the purpose to refer to the decision of the larger bench of the Supreme Court in the case of ***Manharibhai Muljibhai Kakadia and another Vs. Shaileshbhai Mohanbhai Patel and others ; [2012 (10) SCC 517]*** as well as catena of other decisions of the Supreme Court as well as of this Court.

5. Faced with the situation, the learned advocate for

Respondent Nos.1 and 2 fairly conceded the lapse. In the circumstances, it would be appropriate to set aside the order passed by the learned Additional Sessions Judge and remand the matter to him to enable him to hear the petitioners before deciding the Revision.

6. The Writ Petition, therefore, deserves to be allowed and is accordingly allowed. Impugned judgment and order is quashed and set aside and the Criminal Revision is remanded to the learned Additional Sessions Judge for decision afresh after impleading the petitioners as respondents in the Revision and for deciding it after hearing them as contemplated under Sub Section 2 of Section 401 of the Cr.P.C.

7. The rule is made absolute in above terms.

8. The parties to appear before the Sessions Court on 01.08.2018 and there shall be no necessity for the learned Judge to issue notices to the parties.

(MANGESH S. PATIL, J.)

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vmk/-