

Anand

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

WRIT PETITION NO. 1080 OF 2017

1. Paresh Nagandhi .Petitioners
Age : 61 yrs, R/o. Flat No. 9-10,
Parekh Marker, Rajawadi, M. G. Road,
Ghatkopar (E),
Mumbai – 400 077.
2. Tushar Ruparel
Age : 38 yrs, R/o. Flat No. 203,
Mahesh C. H. S., Ramban Lane,
Near Lion Garden, Tilak Road,
Ghatkopar (E),
Mumbai – 400 077.
3. Jigneh R. Kamani
Age : 33 yrs, R/o. Flat No. A / 3,
Parekh Marker, Rajawadi, M. G. Road,
Ghatkopar (E),
Mumbai – 400 077.
4. Smt. Laxmi M. Gada
Age : 59 yrs, R/o. Flat No. A / 7,
Parekh Marker, Rajawadi, M. G. Road,
Ghatkopar (E),
Mumbai – 400 077.
5. Smt. Smita Kamlesh Shah
Age : 44 yrs, R/o. Flat No. 15 / B,
Parekh Marker, Rajawadi, M. G. Road,
Ghatkopar (E),
Mumbai – 400 077.
6. Mahesh Magan Chheda
Age : 53 yrs, R/o. Flat No. 16 / B,
Parekh Marker, Rajawadi, M. G. Road,
Ghatkopar (E),
Mumbai – 400 077.

7. Bharat Kumbhani
Age : 69 yrs, R/o. Flat No. A / 2,
Parekh Marker, Rajawadi, M. G. Road,
Ghatkopar (E),
Mumbai – 400 077.
8. Sandeep Gokharu
Age : 33 yrs, R/o. Flat No. A / 12,
Parekh Marker, Rajawadi, M. G. Road,
Ghatkopar (E),
Mumbai – 400 077.
9. Harshil R. Gadda
Age : 35 yrs, R/o. Room No. 9,
Kanji Mistry Chal, Ram Bhuvan,
Near Balaji Mandir,
Mumbai – 400 077.

Vs.

1. The State of Maharashtra, to be served .Respondents
Through Public Prosecutor, High Court (A.S.),
Mumbai.
2. Khannaiyalal M. Thakkar
Age : 62 yrs, Occu : business
R/o. 8, Bhaveshwar Chhaya,
Opp. Rajawadi Garden,
Ghatkopar (E),
Mumbai – 400 077.

Mr. A. M. Saraogi, Advocate, for the Petitioners
Mr. Y. Dabke, APP, for the Respondent No. 1 – State
Mr. S. P. Kadam, Advocate, for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.

DATE : 24.01.2018

ORAL ORDER

- . Heard learned counsel for the parties.
2. Rule.
3. Rule is made, returnable forthwith with the consent of the parties and is taken up for final disposal.
4. By this Petition, the Petitioners have impugned Clause 2 of the impugned Order dated 06.12.2016 passed by the learned Additional Sessions Judge, City Sessions Court, Greater Bombay in Cri. Revision Application No. 986 of 2015 only to extent, that it issues process as against all the accused under Section 452 r/w 34 of the Indian Penal Code.
5. Perused the papers. Clause (2) of the impugned Order reads thus :-

“2. Issue process against all the accused/present respondents u/sec. 427 & 452 r/w 34 of the Indian Penal Code.”
6. It is not in dispute that process was issued by the learned

Magistrate as against the Petitioners for the offence punishable under Section 452 r/w 34 of the Indian Penal Code. As the Respondent No. 2 (Original Complainant) was aggrieved by non-issuance of process for the offence punishable under Section 427 r/w 34 of the Indian Penal Code, the Respondent No. 2 (Original Complainant) challenged the same in the Sessions Court by filing Cri. Revision Application No. 986 of 2015, which was partly allowed by the learned Sessions Judge vide Order dated 06.12.2016.

7. Learned counsel for the Respondent No. 2 does not dispute the fact, that the power to issue process for the offence punishable under Section 452 r/w 34 of the Indian Penal Code vests with the learned Magistrate and that the Revisional Court could not have issued process directly.

8. There can be no dispute that only the learned Magistrate can issue process on the basis of the observations made in the Revision Application and that the Sessions Court had no power to issue process.

9. Considering the aforesaid, the Petition is allowed and the impugned Order i. e. Clause (2), by which process was issued against all

the accused for the offence punishable under Section 452 r/w 34 of the Indian Penal Code is quashed & set aside. The learned Magistrate shall consider whether process ought to be issued under Section 452 r/w 34 of the Indian Penal Code in the light of the order passed in Cri. Revision Application No. 986 of 2015.

Rule is made absolute in the aforesaid terms.

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

(REVATI MOHITE DERE, J.)