

Anand

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

CRIMINAL APPLICATION NO. 425 OF 2017

1. M/s. Ratilal Becharlal & Sons .Applicants
(Now renamed as M/s. Jasani)
2. Abhay Ratilal Jasani
Age : 72 yrs, Occu : business
3. Mr. Mukesh Kanaiyalal Shah
Age : 67 yrs, Occu : business
4. Shyam Jasani
Age : 46 yrs, Occu : business
5. Mridula Abhay Jasani
Age : 69 yrs, Occu : business

All 1 to 5 having their office at -

HW 6010, Tower H,
Bharat Diamond Board,
Bandra Kurla Complex,
Bandra (E),
Mumbai – 400 051.

6. Dipesh Kothari
Age : 50 yrs, Occu : service
R/at – 266/11,
Arham Building, 2nd floor,
Near Kikabai Hospital, Sion (E),
Mumbai – 400 022.

Vs.

1. The State of Maharashtra .Respondents
2. United Workers Association

Through Joydeb Benimadhav Saha
Age : 53 yrs, R/at – B/104,
Gokul Residency, Thakur Village,
Kandivali (E)
Mumbai – 400 101.

Mr. Abad H. H. Ponda i/b. Mr. S. M. Kalyankar, Advocate, for the Applicants

Mr. V. Chate, APP, for the Respondent No. 1 – State

Mr. J. B. Saha, 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 at the stage of admission.

4. By this Application, the Applicants have impugned the Order dated 22.04.2016 passed by the learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai, by which process was issued as against the Applicants in C. C. No. 138 / SW / 2013.

5. Perused the papers. Without going into the merits of the case, the impugned Order dated 22.04.2016 issuing process will have to be quashed & set aside on the sole ground that the verification statement of the Respondent No. 2 – Complainant was recorded outside the Court and not by the learned Magistrate in his presence. There is a glaring defect in the procedure adopted by the learned Magistrate. The verification statement of the Respondent No. 2 – Complainant would necessarily have to be recorded in Court on oath. Accordingly, the impugned Order dated 22.04.2016 passed by the learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai, by which process was issued as against the Applicants in C. C. No. 138 / SW / 2013 is quashed & set aside on this sole ground.

6. Accordingly, the Application is allowed in the aforesaid terms. Since the complaint is of the year 2013, learned Magistrate shall record the verification statement of the Respondent No. 2 – Complainant and pass appropriate orders thereafter, in accordance with law, as expeditiously as possible and in any event, within three months from the date of receipt of this order.

Rule is made absolute in the aforesaid terms.

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

(REVATI MOHITE DERE, J.)