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

**CRIMINAL APPLICATION NO.1079 OF 2015**

|                                       |                |
|---------------------------------------|----------------|
| Angel Broking Private Limited and Ors | ...Applicants  |
| Versus                                |                |
| Anil Agrawal and Anr.                 | ...Respondents |

Mr.Santanu Mitra a/w Mr.Anubhav Ghosh i/b M/s.Desai and Diwanji, for the Applicants.

Mr.Vijay Thorat i/b Mr.S.B.Thorat, for the Respondent No.1.

Mr.Vinod Chate, A.P.P for the Respondent No.2-State.

***CORAM : REVATI MOHITE DERE, J.***

***DATE : 2<sup>nd</sup> FEBRUARY, 2018***

**P.C. :**

1. Heard learned Counsel for the parties.
  
2. At the outset, learned counsel for the respondent no.1 (original complainant) submitted that he has no objection for quashing and setting aside of the impugned order dated 13<sup>th</sup> April, 2015, passed by the learned Additional Chief Metropolitan Magistrate, 8<sup>th</sup> Court, Esplanade, Mumbai, in C.C.No.800160/SW/2013, issuing process as against the applicants.

Learned Counsel for the Respondent No.1 accepts that the said order of issue process was passed by the learned Magistrate prematurely and without waiting for the report under Section 202 of Code of Criminal Procedure. He submitted that the learned Magistrate has now received the report and as such the impugned order be set aside and the learned Magistrate be directed to pass appropriate orders, in accordance with law, after considering the report filed by the police and the complaint.

3. Learned Counsel for the applicants submits that there are several issues raised in the application, apart from the issue that the order of issue process was passed by the learned Magistrate, prematurely.

4. Perused the papers including the impugned order of issue process dated 13<sup>th</sup> April, 2015. Admittedly, the respondent no.1 had filed a private complaint i.e. C.C.No.160/SW/2013 on 5<sup>th</sup> December, 2013 in the Court of the learned Additional Chief Metropolitan Magistrate, 8<sup>th</sup> Court, Esplanade, Mumbai. After, the learned Magistrate rejected the respondent no.1's (Original complainant's) prayer to pass an order under Section 156(3) of Code of Criminal Procedure, the learned Magistrate recorded the

verification of the respondent no.1 and ordered an enquiry under Section 202 of Code of Criminal Procedure, on 6<sup>th</sup> September, 2014. Admittedly, the learned Magistrate without waiting for the report, issued process as against the applicants on 13<sup>th</sup> April, 2015, which order has been impugned in this application. The learned Magistrate ought to have waited for the report before issuing process and hence, on this very ground the impugned order of issue process ought to be quashed and set aside. Accordingly, the following order is passed:-

**ORDER**

- i) The impugned order dated 13<sup>th</sup> April, 2015, passed by the learned Additional Chief Metropolitan Magistrate, 8<sup>th</sup> Court, Esplanade, Mumbai, in C.C.No.800160/SW/2013, is quashed and set aside;
- ii) The learned Magistrate shall pass appropriate orders, in accordance with law, after considering the final report submitted by the police dated 5<sup>th</sup> January, 2016 and the complaint, on its own merits, in accordance with law.

5. Rule is made absolute in the aforesaid terms.
6. All concerned to act on the authenticated copy of this order.

***REVATI MOHITE DERE, J.***