

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2078 OF 2018

1. Krishnagopal Raghunathprasad]
Maheshwari, Age- 59 years]
Occ- Business, Director of]
Kumar Audyogik Vikas Pvt. Ltd]
19/1c, Miraj-Kupwad MIDC Road]
A/o. Sawali, Tal, Miraj, Dist- Sangli.]
]
2. Shamsundar Raghunathprasad]
Maheshwari, Age- 61 Years]
Occ- Business, Director of]
Kumar Audyogik Vikas Pvt. Ltd]
19/1c, Miraj-Kupwad MIDC Road]
A/o. Sawali, Tal, Miraj, Dist- Sangli.]
]
3. Dwarka Raghunathprasad Maheshwari]
Age- 57 Years, Occ- Business,]
Director of Kumar Audyogik Vikas]
Pvt. Ltd 19/1c, Miraj-Kupwad MIDC]
Road A/o. Sawali, Tal, Miraj,]
Dist- Sangli.]
]
4. Omkarnath Raghunathprasad]
Maheshwari, Age- 55 years,]
Occ- Business, Director of]
Kumar Audyogik Vikas Pvt. Ltd]
19/1c, Miraj-Kupwad MIDC Road]
A/o. Sawali, Tal, Miraj, Dist- Sangli]
]
5. M/s. Kumar Audyogik Vikas Pvt. Ltd.]
19/1c, Miraj-Lupwad MIDC Road]
A/p. Sawali, Tq. Miraj, Dist. Sangli.]
]
6. Krishnagopal Raghunathprasad]
Maheshwari, Age- 59 years,]

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| | Occ- Business, Director of |] | |
| | M/s. Kumar Adyogik Vikas Pvt. Ltd. |] | |
| | Plot No. 55, Bhojpur, Ramnagar |] | |
| | Chandauli, Varanasi (Uttar Pradesh) |] | |
| | |] | |
| 7. | Omkarnath Raghunathprasad |] | |
| | Maheshwari, Age- 55 years, |] | |
| | Occ- Business, Director of |] | |
| | M/s. Kumar Audyogik Vikas Pvt. Ltd. |] | |
| | Plot NO. 55, Bhojpur, Ramnagar |] | |
| | Chandauli, Varanasi (Uttar Pradesh) |] | |
| | |] | |
| 8. | M/s. Kumar Audyogik Vikas Pvt. Ltd. |] | |
| | Plot No. 55, Bhojpur, Ramnagar |] | |
| | Chandauli, Varanasi (Uttar Pradesh) |] | Petitioners |

VERSUS

- | | | | |
|----|--------------------------------|---|-------------------|
| 1. | The Food Inspector, |] | |
| | Food and Drugs Administration |] | |
| | Shri. Bibhishan Dattatray Mule |] | |
| | M.S. Sangli. |] | |
| | |] | |
| 2. | State of Maharashtra |] | Respondents |

Mr. Kuldeep U. Nikam for the petitioners.

Mrs. G.P. Mulekar, APP for Respondent No. 2-State.

CORAM : S. S. SHINDE J.
 RESERVED ON: 21st June 2019.
 PRONOUNCED ON: 2nd July 2019.

JUDGMENT

- The petitioners have challenged the judgment and order dated 3rd April 2018 passed by the Learned Additional Sessions Judge, Sangli passed in Criminal Revision Application No. 36 of 2014, only to the extent of remanding criminal complaint to the learned Chief Judicial Magistrate, Sangli for fresh

hearing/consideration and further prayed to allow the criminal revision filed by the petitioners in toto.

2. Respondent No. 1 filed a complaint against the present petitioners. It is contention of the petitioners that the Learned CJM, Sangli erroneously issued the process against the present petitioners without considering the fact that the prima facie case is not made out against the present petitioners. On 15.03.2014 summons were issued to the petitioners. On 30.04.2014 petitioners preferred a Criminal Revision Application challenging the aforesaid order of issuing process passed by the Ld. CJM, Sangli issuing process against the petitioners. On 03.04.2018 the Ld. Additional Sessions Judge although set aside the impugned order dated 16.06.2011 thereby issuing process against the petitioners, however, remanded the said criminal proceeding back to the Ld. CJM, Sangli for reconsideration on the point of issuing process. Hence, the present petition.

3. Learned counsel appearing for petitioners submit that, when the Learned Additional Sessions Judge, Sangli held that the order of issuance of process passed by the learned Magistrate is illegal and not maintainable in the eyes of law, the Sessions Court could not have remanded the matter back to the Ld. CJM to reconsider the issuance of process. It is submitted that the Ld. Additional Sessions Judge failed to appreciate that even otherwise the complaint

was lodged by the present Respondent No. 1 after expiry of validity of the collected sample and due to this reason the right of the petitioners as contemplated under section 13 (2) of Prevention of Food Adulteration Act, 1954, is frustrated and on this count alone the said complaint deserves to be set aside. It is submitted that, the Ld. Additional Sessions Judge, failed to appreciate that, *prima facie* it reflects that the public analysis report does not disclosed the sample collected is unfit for human consumption, and there is no documentary evidence about the receipt of the sample by the public analysis. So also the proforma sent for approval is not correct. On said ground also the criminal complaint deserves to be quashed and set aside and no “issue process” order would have been passed by the Ld. CJM, Sangli. It is further submitted that, the Ld. Additional Sessions Judge failed to appreciate that the said criminal complaint itself was not filed by the Food Inspector who had collected the said samples and even the list of the witnesses was also not given. In such circumstances the said criminal complaint deserves to be quashed and set aside. It is submitted that, the Ld. Additional Sessions Judge has failed to appreciate that even otherwise the *prima facie* reading of the said criminal complaint does not disclose any role of the present petitioners so as to come to a conclusion that they have committed the offences as alleged in the said complaint and on this count also the said complaint deserves to be set aside.

4. It is further submitted that, complainant arrayed the present petitioners without disclosing their role in the alleged commission of offence. Therefore, learned counsel appearing for the petitioners submit that, petition may be allowed.

5. On the other hand, learned APP appearing for contesting respondent submits that, principle ground on which the order of issuance of process was challenged by the petitioners before the Sessions Court was that, said order is passed without considering relevant documents on record. Learned Sessions Court has observed in the impugned judgment that Ld. CJM without recording prima facie satisfaction has casually issued process therefore, Additional Sessions Judge thought it fit to remit the matter back to the Court of Ld. CJM, Sangli. Therefore, learned APP submits that, petitioners cannot pray to adjudicate the contentions raised in the petition on merits. It is submitted that appropriate course would be to appear before the Magistrate and argue the case on merits.

6. Upon appreciating rival contentions and perusal of impugned judgment of the Sessions Court would make it clear that the principle ground which was taken before the said Court by petitioners was that the Magistrate has casually issued the process without adverting to the documents which were

placed on record. It was brought to the notice of the Sessions Court that, order of issuance of process has been mechanically issued and learned Magistrate passed the order without applying his mind. Therefore, after appreciating the main ground agitated before the Sessions Court, said Court thought it fit to cause an interference in the order passed by learned CJM, Sangli and remitted the matter back to the concerned Court. Since learned CJM, Sangli has not applied its mind to the facts of the case and not adverted to the documents which were placed on record, therefore, the Sessions Court has rightly remitted the matter back to CJM, Sangli, therefore, there is no reason to interfere in the order of remand passed by Sessions Court. Learned Sessions Judge directed the learned CJM, Sangli to appreciate entire documentary evidence by giving opportunity to the complainant. Since, learned CJM, Sangli has not applied its mind to the complaint and documents produced on record, while exercising writ jurisdiction appreciating contentions on merits and acceding to the prayer of the petitioners would cause injustice to the complainant. However, in case again process is issued by learned CJM, Sangli in that case petitioners will have liberty to contest the said proceedings. Therefore, no case is made out to cause interference in the impugned judgment and order passed by Additional Sessions Judge, Sangli. Hence, petitions stands rejected.

7. The contentions raised on merits are kept open to be agitated in the proceedings before the Court below.

8. Learned Chief Judicial Magistrate, Sangli to expedite the hearing of the proceedings as expeditiously as possible and take final decision, within six months from the receipt of this order. In case applications for exemption are filed by the petitioners and if the date is not fixed for effective hearing, the concerned Court may consider the prayer of the petitioners for exemption liberally.

[S.S. SHINDE, J.]