

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

**WRIT PETITION NO. 2083 OF 2016
WITH
CRIMINAL APPLICATION NO. 40 OF 2018
WITH
CRIMINAL APPLICATION NO. 348 OF 2018
WITH
CRIMINAL APPLICATION NO. 551 OF 2018**

1 Mr. Premji Narayanji Thakkar & ors. ..Petitioners.

V/s.

The State of Maharashtra & ors. ..Respondents.

Mr. Yashpal Thakur I/b. Mr. Rajendra Sorankar a/w. Mr. Devendra Shukla, advocate for petitioner.

Mr. Rishi Bhuta I/b Ms. Pravina Kanani and Ms. Gunjan Thakkar, advocate for respondents.

Mr. S.S. Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : MAY 2, 2019.

P. C. :

1 Heard the learned Counsel for the Petitioners and the learned Counsel for the respondents.

2 Rule. Rule made returnable forthwith with the consent of the

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parties.

3 The petitioners herein are the original complainants in C.C. NO. 125/SS/2009 and 16 others and present respondents are accused in all complaints filed by the petitioners. The verification statement of the petitioner No. 5 was recorded on 18/2/2009. On the same day, the learned Magistrate being satisfied with the contents of the complaint and the verification, had issued process in all 17 cases. The plea of the respondent Nos. 2 to 4 was recorded on 26/10/2009. The affidavit of evidence was filed in June, 2014.

4 On 24/6/2014 the respondent Nos. 2 to 4 have filed an application seeking recalling of the process, which was issued on 18/2/2009. In fact, such an application was not maintainable. Hence, the same was rejected on 1/9/2015.

5 The main contention of the respondents was that the complaint is barred by law of limitation. However, the order rejecting the application seeking recall of process was challenged by filing criminal Revision Application No. 1397 of 2015. It is pertinent to note that the same was filed challenging the order only in Criminal Complaint No. 125/SS/2009. The learned Sessions Judge had entertained the Revision

Application dismissing the application seeking recalling of process after filing of affidavit of evidence by the complainant and the revision application was allowed vide Order dated 16/4/2016.

6 It is further pertinent to note that the application was filed by the respondent Nos. 2 to 4 before the Metropolitan Magistrate that the order passed in Criminal Case No. 125/SS/2009 be followed in all other 16 cases.

7 The petitioners herein are challenging the order passed by the Revisional Court, thereby dismissing the complaint. In fact, the learned Sessions Judge ought not to have entertained the revision application challenging the order of dismissing the application seeking recalling of process. In fact, the Hon'ble Apex Court in the case of **Adalat Prasad vs Rooplal Jindal & Ors reported in (2004) 7 SCC 338** has observed that an application seeking recall of process is not maintainable under the Code of Criminal Procedure, 1973 as it would amount to review of the order issuing process.

8 In any case, learned Sessions Judge has not only set aside the order of rejecting application for recalling of process but has dismissed the complaint. The said proceedings and the order would cause

prejudice to the cause of the complainants i.e. present petitioners and other complainants and in any case, it could not be made applicable in the other 16 cases. It amounts to abuse of process of law.

9 The learned Counsel Mr. Bhuta appearing for the respondent Nos. 2 to 4 has fairly conceded to the remand of the matter. In this circumstance, once this Court has held that the filing application for recalling of process, entertaining revision application against the dismissal of the said application itself is an abuse of process of law. The matter deserves to be remanded to the trial Court to be decided on merits.

10 In view of the aforesaid discussion, the order passed by the Revisional Court dated 16th April, 2016 is hereby quashed and set aside. The Criminal Complaint No. 125/SS/2009 is restored to its original status alongwith other 16 complaints. The learned Magistrate to decide the same on its own merits without being prejudiced by the order of this Court, since the order of this Court is only pertaining to the application seeking recalling of process and the subsequent order passed in revision application.

11 It is made clear that this Court has not considered merits of

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the matter i.e. of the complaint. Hence, the trial Court to decide it on its own merits. All contentions are kept open.

12 Rule is made absolute in the above terms. Criminal Writ Petition stands disposed of. The parties to appear before the trial Court on 10/6/2019.

13 In view of this order, all Criminal Applications are disposed of.

[SMT. SADHANA S. JADHAV, J.]