

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 443 OF 2005**

- 1 Pune Municipal Corporation,  
(General Body), Shivajinagar  
Pune – 411 005.
- 2 Shri. Dilip Baburao Tupe,  
Adult, Occupation : Social  
Worker & Member of Standing  
Committee of Pune Municipal  
Corporation, Residing at:  
208, Malwadi, Hadapsar,  
Pune-411 028.
- 3 Shri. Mukari Shetty Algude,  
Adult, Occupation: Social  
Worker & Member of Standing  
Committee, Pune Municipal  
Corporation, Residing at  
336, Old Wadarwadi,  
Pune – 411 016.
- 4 Shri. Suresh Vitthalrao Kadam,  
Adult, Occupation: Social  
Worker & Member of Standing  
Committee, Pune Municipal  
Corporation, Residing at  
Katraj Gaon, Opp. Ganpati  
Mandir, Pune – 411 046.
- 5 Padmaja Prakash Gole,

- Adult, Occupation: Social Worker & Member of Standing Committee, Pune Municipal Corporation, Residing at Shree Tej, Flat No.3, Maharashtra Housing Board Colony, Pune – 411 016.
- 6 Shri. Sopan alias Kakasaheb Bandoji Chavan, Adult, Occupation: Social Worker & Member of Standing Committee, Pune Municipal Corporation, Residing at S. No.64, Venkateshwara Apartments, Vadgaon Budruk, Sinhgad Road, Pune.
- 7 Shri. Sham Ramchandra Taware, Adult, Occupation: Social Worker & Member of Standing Committee, Pune Municipal Corporation, Residing at 82, Parvati Gaon, Parvati Towers, Parvati, Pune – 411 009.
- 8 Mrs. Sangeeta Prasad Devkar, Adult, Occupation: Advocate, Social Worker & Member of Standing Committee, Pune Municipal Corporation,

Residing at 253, New Khadki, Yerawada,  
Pune – 411 006.

- 9 Shri. Sachin Ranganath Bhagat,  
Adult, Occupation: Social  
Worker & Member of Standing  
Committee, Pune Municipal  
Corporation, Residing at  
48/3, 4, Ganeshnagar,  
Vadgaon Sheri, Pune – 411 014.
- 10 Shri. Vikas Madhukar Mathakari,  
Adult, Occupation: Social  
Worker & Member of Standing  
Committee, Pune Municipal  
Corporation, Residing at  
8, Ratnali, 804, Shivajinagar,  
Pune – 411 005.
- 11 Shri. Bharat Bhanudas Vairag,  
Adult, Occupation: Social  
Worker & Member of Standing  
Committee, Pune Municipal  
Corporation, Residing at  
429/30, Dias Plot,  
Gultekadi, Pune – 411 037.
- 12 Mrs. Jyotsna Sardeshpande,  
Adult, Occupation : Social  
Worker & Member of Standing  
Committee, Pune Municipal  
Corporation, Residing at  
434, Yashodeep, Shaniwar Peth,

Pune-411 030.

- 13 Shri Manish Gajanan Salunke  
Adult, Occupation : Social  
Worker & Member of Standing  
Committee, Pune Municipal  
Corporation, Residing at  
180, Nana Peth, Pimpri Chowk,  
Pune-411 002.
- 14 Sou. Nirmala Wilson Hire  
Adult, Occupation : Social  
Worker & Member of Standing  
Committee, Pune Municipal  
Corporation, Residing at  
H-15/2779, Maitri Society,  
Maharashtra Housing Board, Yerwada,  
Pune-411 006.

Vs.

- 1 Shri. Ramesh Radhakrishna Phondage,  
Age 63 years, Occupation: Retired &  
Social Worker, Residing at – 54-B,  
Hanumannagar, Pune-411 016.
- 2 Shri. Sahadu Bhaurao Repale,  
Age 63 years, Occupation  
Advocate & Social Worker,  
Residing at Damodhar Apartments,  
Behind Divgi Metal, Erandwana Gaothan  
Pune-411 004.

- 3 Shri. Maruti Sahebrao Bhapkar,  
Age 32 years, Occupation;  
Agriculturist & Social Worker  
Residing at – Sanjeevan Chawal,  
Mohannagar Chinchwad, Pune-411 019.
- 4 Mr. Dominic Albert Lobo,  
Age- 43 years, Occupation:  
Social Worker and Business  
Residing at Sangamnagar,  
S.No.4, Old Sangavi,  
Pune-411 027.
- 5 Shri. Sanjay Kumar,  
Adult, Occupation : Service  
Former Municipal Commissioner,  
Pune Municipal Corporation,  
Shivajinagar, Pune-411 005.
- 6 State of Maharashtra ....Respondents.

Mr. R.M. Pethe for the Petitioners.  
Mr. Amit Palkar for the Respondent No.6-State.

**CORAM : A. S. GADKARI, J.**  
**DATE : 15<sup>th</sup> FEBRUARY, 2021.**

**ORAL JUDGMENT:-**

By the present Petition, the Petitioners have impugned Order dated 19<sup>th</sup> January, 2005, passed by the learned II Additional Sessions Judge, Pune in Criminal Revision Application No.33 of 2005 thereby, dismissing the said Revision Application on the ground that, the Order

impugned therein, dated 3<sup>rd</sup> December 2004, passed by the learned Judicial Magistrate, First Class, (P.M.C.), Pune issuing process under Sections 167 and 409 read with Section 120 of the Indian Penal Code (for short, “*the IPC*”) against the Petitioners herein, in Regular Criminal Case No.22 of 2004 is an interlocutory Order.

2           Heard Mr. Pethe, learned counsel for the Petitioners.

Record indicates that, the Respondent Nos.1 to 4 (Original 3 Shri. Mukari Shetty Algude, Adult, Occupation: Social Worker & Member of Standing Committee, Pune Municipal Corporation, Residing at 336, Old Wadarwadi, Pune – 411 016.3 Shri. Mukari Shetty Algude, Adult, Occupation: Social Worker & Member of Standing Committee, Pune Municipal Corporation, Residing at 336, Old Wadarwadi, Pune – 411 016.Complainant) have been duly served and an Affidavit of Service dated 8<sup>th</sup> December, 2005 has been filed by the Petitioners on record.

The Respondent No.5 is the former Municipal Commissioner of Pune Municipal Corporation and is a formal party to the present Petition. Respondent No.6, State of Maharashtra is also formal party and is being represented by the learned APP.

3           Record indicates that, the Respondent Nos.1 to 4 have filed the aforestated Complaint in the Court of Judicial Magistrate, First Class, (P.M.C.), Pune on 28<sup>th</sup> October, 2004 for the alleged offences committed by the Petitioners under Sections 166, 167, 409 and 465 read with Section

120(b) of the IPC. Learned Trial Court, after recording verification of Respondent No.1-Shri. Ramesh R. Dhondage, was pleased to issue process against all the Petitioners and Respondent No.5, the then Commissioner of Pune Municipal Corporation under Sections 167, 409 read with Section 120 of the IPC, by its Order dated 3<sup>rd</sup> December, 2004.

4           Feeling aggrieved by the said Order dated 3<sup>rd</sup> December, 2004, the Petitioners preferred Criminal Revision Application No.33 of 2005, in the Court of II Additional Sessions Judge, Pune. The Revisional Court, by its impugned Judgment and Order dated 19<sup>th</sup> January, 2005 was pleased to dismiss the said Revision Application predominantly on the ground that, an Order of issuance of process is an interlocutory Order and therefore, the said Order cannot be challenged by way of Revision, invoking the provisions of Section 397 of the Code of Criminal Procedure. The Revisional Court has relied on two decisions of the Hon'ble Supreme Court in the impugned Order, namely (i) *Adalat Prasad Vs. Rooplal Jindal & Ors.* Reported in (2004) 7, S.C.C. 338 and (ii) *K.M. Mathew Vs. State of Kerala* reported in (1992) 1 S.C.C. 217.

5           Mr. Pethe, learned counsel for the Petitioners submitted that, the Trial Court while passing the impugned Order did not take into consideration the decisions of the Hon'ble the Supreme Court in the case of *Madhu Limaye Vs. State of Maharashtra* reported in (1977) 4 SCC 551 : AIR 1978 SC 47 and *V.C. Shukla Vs. State through CBI*, reported in 1980

*Supp. SCC 92 : AIR 1980 SC 962* in which it is held that, Order issuing process can be challenged in the Revisional jurisdiction under Section 397 of the Cr.P.C.. He therefore, prayed that, the impugned Order dated 19<sup>th</sup> January 2005, passed by the learned II Additional Sessions Judge, Pune may be quashed and set aside by relegating the Petitioners to the jurisdiction of Revisional Court.

6           A useful reference, at this stage, can be made to the decision of the Hon'ble Supreme Court in the case of *State of Gujarat Vs. Afroz Mohammed Hasanfatta*, reported in *AIR 2019 SC 2499* wherein, after taking into consideration various decisions in the field, the Hon'ble Supreme Court in paragraph No.25 has observed as under:-

*25 After referring to various judgments, in Urmila Devi (AIR Online 2013 SC 343), this Court summarised the conclusion as under:-*

*21. ....*

*21.1. The order issued by the Magistrate deciding to summon an accused in exercise of his power under Sections 200 to 204 CrPC would be an order of intermediary or quasi-final in nature and not interlocutory in nature.*

*21.2. ....*

*21.2. ....*

*21.3. ....*

*.....*

*23. Therefore, the position has now come to rest to the effect that the revisional jurisdiction under*

*Section 397 Cr.P.C. is available to the aggrieved party in challenging the order of the Magistrate, directing issuance of summons”.*

It is thus clear that, Revision against the Order of issuance of process is maintainable.

7 In view of the above, the impugned Judgment and Order dated 19<sup>th</sup> January, 2005 passed by the learned II Additional Sessions Judge, Pune in Criminal Revision Application No.33 of 2005 is quashed and set aside. Criminal Revision Application No.33 of 2005, is restored to the file of II-Additional Sessions Judge, Pune. Learned Judge of the Revisional Court is directed to hear all the concerned in the said Revision Application and pass appropriate Orders as per the provisions of law.

Writ Petition is accordingly allowed in the aforesaid terms.

**(A.S. GADKARI, J.)**

Sanjiv S.  
Mashalkar

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by Sanjiv S.  
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