

17th September, 2018 petition was withdrawn. Verification statement of applicant/complainant was recorded on 29th June, 2016. Statement of witness was recorded on 20th July, 2016. The learned Magistrate issued process against Respondent vide order dated 13th January, 2017 for the offences punishable under Sections 420, 465, 467 & 468 of Indian Penal Code.

3. The Respondent No.2 preferred Revision application bearing No.191 of 2017 before Sessions Court. The Respondent No.2 also preferred an application before the Sessions Court, in the Revision Application filed by him and prayed that, he may be permitted to produce documents in the Revision application. Thereafter, Respondent No.2 preferred another application before Sessions Court for production of documents. The applicant filed reply in both the applications and opposed the reliefs. The Sessions Court vide order dated 28th January, 2021 allowed the applications and respondent No.2 was permitted to produce documents.

4. The learned Sessions Judge thereafter proceeded to hear the revision application and vide order dated 8th February, 2022 set aside the order of process dated 13th January, 2017 and remanded the matter back to the trial Court for examination of additional evidence produced by the accused in the revision application and pass fresh order with his findings in light of that additional

evidence about issue of process against accused. The accused was directed to point out the copies of additional evidence to the staff of the Court and it was further directed that the copies be sent with the order of the Court to the learned Magistrate. The order further directs that both the parties shall give co-operation before the trial Court to pass suitable order on the said complaint of 2017 within a period of two months from receipt of copies of additional evidence with the order of the Court.

5. learned Advocate for the applicant submitted that the learned Sessions Judge has not only set aside the order of process and remanded the case back to trial Court, but also directed the lower Court to examine additional evidence produced by accused and pass fresh order with his findings in the light of additional evidence about issue of process against accused. This approach is contrary to law. It would amount to providing an opportunity of hearing to the accused, at the stage of issue of process. The learned Sessions Judge ought not to have allowed the application for production of documents at the instance of the accused in Criminal Revision Application. The Sessions Court while exercising revisional jurisdiction cannot look into any material which was beyond the scope of complaint. The order dated 28th January, 2021 as well as order dated 8th February, 2022 are bad in law and

required to be set aside.

6. Learned counsel for Respondent No.2 submitted that the application preferred by Respondent No.2 for production of document was allowed by the learned Sessions Court. Say filed by the complainant indicate that the production may be allowed. It is also submitted that, some of the document put to the knowledge of the complainant and which was in existence prior to order of process and the said documents were not produced before the Court. The documents produced before Sessions Court were to the knowledge of applicant. There was suppression of facts by complainant while filing complaint. The learned Sessions Judge by assigning detailed reasons passed the order and set aside the order of process and remanded the case back to the trial Court. He relied on decision of Supreme Court in the case of **Manik Kutum V/s. Julie Kutum AIR 2019 SC 1829**.

7. From the documents on record it is apparent that the Respondent No.2 filed Revision application before the Sessions Court challenging order of issuance of process. During the pendency of the Revision application, Respondent No.2 filed two applications viz. Exhibit – 16 and Exhibit – 20. The Respondent No.2 sought production of certified copies of certain documents. It was contented that complainant is aware about the documents and

that he had suppressed the documents from the Court of JMFC. Both the applications were opposed by the complainant. The Sessions Court allowed the application by order dated 28th January, 2021. Thereafter, the learned Sessions Judge partly allowed the Revision Application vide order dated 8th February, 2022. The order issuing process was set aside and matter was remanded to Court of Magistrate for passing fresh order on examination of additional evidence produced by accused in the Revision application. The accused was directed to point out the copies of additional evidence to the staff of the Court. It is relevant to note that the documents/additional evidence were not before the Court of learned Magistrate. The documents were also not part of Revision application. Applications were made for production of those documents which was allowed. The learned Sessions Judge considered the documents while deciding Revision application. The accused cannot be heard at the time of issuance of process. The Sessions Court in Revision application considered the documents produced by accused as additional evidence and directed the Court of learned Magistrate to consider it while issuing process. The order dated 8th February, 2022 also directs both the parties to give cooperation to learned Magistrate to pass suitable order on the said complaint within two months. The order gives

indication that both parties including accused are allowed to participate in proceedings before Court of Magistrate. Even if accused is not directed to appear before the trial Court, directing the learned Magistrate to consider documents produced by accused in Revision application amounts to giving audience to accused at the stage of issuing process. The powers of Revisional Court are limited. The Sessions Court allowed production of new documents and also considered them as additional evidence and proceeded to pass impugned order. The order passed by learned Sessions Judge is contrary to law. Both the orders dated 28th January, 2021 and 8th February, 2022 are required to be set aside. The learned Advocate for Respondent No.2 has relied on decision in the case of Manik Kutum V/s. Julie Kutum (supra). The facts of the said decision relates to proceedings under Section 125 of Cr.P.C. The wife had claimed maintenance from husband. The learned Magistrate allowed the application for maintenance for minor daughter but rejected application to wife. The said order was challenged by wife. Revision application was filed by her before High Court. The High Court remanded the cases to Court of Magistrate to declare the Respondent to be legally married wife of appellant before Supreme Court and to decide quantum of maintenance. This order was challenged before Apex Court. In this context the Court had

observed that the need to remand the case to S.D.J.M. is called for only when some factual inquiry is requested to be held to decide any factual issue involved in the case which cannot be undertaken at the revision stage or when it is noticed that there is no finding on any particular factual issue recorded by Court of Magistrate or when additional evidence is filed for the first instance and to record finding in the light of such additional evidence. The said decision is not applicable in the present case. The procedure relating to complainants to Magistrate is provided in Chapter XV of Code of Criminal Procedure. At the stage of issuing process, the accused has no right to participate in the proceeding. The learned Sessions Judge has directed the first Court to consider the documents produced by accused in Revision application as additional evidence while issuing process. This is not permissible in law. The result of allowing such documents to be considered by learned Magistrate as per direction of Sessions Court amounts to provide hearing to accused at the stage of process.

8. In these circumstances, the orders passed by the learned Sessions Judge can be set aside with directions to the Sessions Court to decide the revision application preferred by Respondent No.2 a fresh on merits and in accordance with law.

9. Hence, I pass the following order:

ORDER

- i. Orders dated 8th February, 2022 and 28th January, 2021 passed by Additional Sessions Judge, Pune are set aside.
- ii. The concerned Sessions Court shall decide the Revision Application preferred by Respondent No.2 afresh on merits and in accordance with law.
- iii. Criminal application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)