

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

40 CRIMINAL WRIT PETITION NO.1109 OF 2021

**AMIT ABHAYKUMAR MUTHA AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.V.S. Bedre, Advocate for the petitioners.

Mr.PN. Kutti, APP for the respondent/State.

Mr.Shaikh M.A. Jahagirdar, Advocate for respondent No.3.

**CORAM : KISHORE C. SANT, J.
DATED : 09.03.2023**

PC :-

01. Heard learned Advocates for the parties. This petition is against an order passed by the learned Additional Sessions Judge, Ahmednagar dated 03.04.2021 passed in Criminal Revision Application No.116 of 2019 rejecting the revision application. The learned JMFC, Court No.2, Shrirampur rejected applications Exhs.38 and 40 in RCC No.68 of 2018. The applications were preferred by the petitioners who are accused in the said criminal case. The petitioners had filed an application below Exh.38 seeking discharge from the case. An application below Exh.40 was for recall of process. The learned JMFC rejected Exh.38 observing that in view of section 245 (2) of Cr.P.C. the application was not maintainable as it was case instituted upon a complaint. So far as Exh.40 is concerned, the learned JMFC observed that there is no

provision to file application to recall the process. The Revisional Court upheld the order passed by the learned JMFC and rejected the revision. The petitioners are, therefore, before this Court.

02. After hearing the parties for some time and after expressing opinion by this Court, the learned Advocate for the petitioners prayed for withdrawal of the petition to the extent of rejection of application below Exh.38. The learned Advocate for the petitioners fairly concedes that said application was not maintainable. So far as application below Exh.40 is concerned, he concedes that he should have filed revision against the order of issuance of process by the learned Magistrate. In view of this, he seeks leave to withdraw the petition with liberty to apply to the Sessions Court against the order of issuance of process.

03. The learned Advocate for the respondent vehemently opposes this prayer saying that the petition is pending since 2021 and now request is made, that too after the respondent has appeared in the matter.

04. However, considering that the petitioners have right to challenge

the order of issuance of process by filing revision, this Court finds that liberty can be granted to the petitioners so as to facilitate the petitioners to avail remedy available under the law. This Court, therefore, allowed the petitioners to withdraw the petition with liberty to file appropriate proceeding challenging the order of issuance of process. Needless to say that the time consumed during pendency of this petition will be considered while considering delay that is caused for filing the appropriate proceeding.

05. With the above observations, the petition is disposed off.

[KISHORE C. SANT, J.]