

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

CRIMINAL APPLICATION NO.9 OF 2023

Sushil Kumar Mehta

...Applicant

Versus

The State of Maharashtra & Anr

...Respondents

Mr. Rahul Totala a/w Ashwin Poojari, Advocate for Applicant.

Mr. Arfan Sait, APP for State/Respondent No.1.

Mr. Prathamesh Naik a/w M.K. Kocharekar, Advocate for
Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 6th OCTOBER 2023

PC :

1. The Applicant has challenged the order dated 21st May 2022 passed by the Judicial Magistrate First Class, Court No.4, Vashi, Navi Mumbai in O.M.A. No.89/2021.

2. The Applicant is the original Accused No.2 in those proceedings. Learned Counsel for the Applicant invited my attention to the order dated 30th June 2023, passed in Criminal Application No.1210/2022, in the case of **Nilesh Vasant Patil vs. Sajith Kunimal Venugopal & Anr.** The operative part of the said order reads thus:

“

ORDER

- i. The order dated 21st May, 2022 passed by the Judicial Magistrate First Class, 4th Court, Vashi in O.M.A. No.89/2021 issuing process against the accused is set aside.
- ii. Since the learned Magistrate has already recorded the verification of the complainant, he shall proceed from that stage onwards. All the options laid down by the aforesaid Sections are available with the Magistrate to take further steps.
- iii. It is made clear that this Court has not expressed its opinion on the merits of the matter. All the contentions, on merits, of both the parties are specifically left open.
- iv. With these directions, the Application is disposed of.”

3. Learned Counsel for the Applicant submitted that in view of this order, since the process is already set aside and the Magistrate is directed to proceed from the stage after recording of verification onwards, nothing survives in this Petition but it be clarified that the said order applies to the present Applicant as well.

4. Learned Counsel for the Respondent No.1 could not controvert these submissions. I have perused the order passed in the Criminal Application No.1210/2022. That Application was decided on the ground that the procedure adopted by the learned Magistrate was not correct and the order under Section 202 of Cr.P.C., ordering police inquiry, was passed before recording verification of the Complainant and his witnesses. On that ground the order of issuance of process was set aside and the Magistrate was directed to proceed from the stage which comes next to recording of the verification statement. The verification statement is already recorded. The Magistrate has to proceed from that stage onwards.

5. Considering this background and the operative part of the order passed in Criminal Application No.1210/2022, it is obvious that, the entire order of issuance of process against all the Accused is set aside and the Magistrate is directed to proceed from the stage after recording of the verification. The said operative part will apply to the entire case.

6. With these clarifications, the present Application is disposed of.

(SARANG V. KOTWAL, J.)