

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

CRIMINAL APPLICATION NO.495 OF 2019

1. Mr. Anjani Kumar Rameshkumar
Chaudhari
Ex-Director, Mahindra Logistics Ltd
1A/1B, 4th Floor, Techniplex-I
Techniplex Complex, Veer Savarkar
Flyover, Goregaon (W), Mumbai-400062

2. Mr. Zhooben D. Bhiwandiwal
Director, Mahindra Logistic Ltd
1A/1B, 4th Floor, Techniplex-I,
Techniplex Complex, Veer Savarkar
Flyover, Goregaon (W), Mumbai-400062

3. Mr. Parag C. Shah
Director, Mahindra Logistic Ltd
1A/1B, 4th Floor, Techniplex-I,
Techniplex Complex, Veer Savarkar
Flyover, Goregaon (W), Mumbai-400062

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4. Mr. Chandrashekar Kandasamy
Director, Mahindra Logistic Ltd
1A/1B, 4th Floor, Techniplex-I,
Techniplex Complex, Veer Savarkar
Flyover, Goregaon (W), Mumbai-400062

5. Mr. Ruzbeh B. Irani
Ex-Director, Mahindra Logistics Ltd
1A/1B, 4th Floor, Techniplex-I,
Techniplex Complex, Veer Savarkar
Flyover, Goregaon (W), Mumbai-400062

6. Mr. Sunish M. Sharma
Director, Mahindra Logistics Ltd

1A/1B, 4th Floor, Techniplex-I,
Techniplex Complex, Veer Savarkar
Flyover, Goregaon (W), Mumbai-400062

7. Mr. Sanjeev H. Aga
Residing at 1301 Satguru Sanskar,
3rd Road, Near Almeida Park,
Off Turner Road, Bandra West,
Mumbai-400050

8. Ms. Neelam Deo
Residing at Apartment No.-4,
Fourth Floor, Scherazade Colaba,
Dilip Sardesai Chowk, Near Faryas
Hotel, Colaba, Mumbai-400005.
Currently at, 113 W Gorgas Lane,
Philadelphia, PA 19119, USA

9. Mr. Ajay N. Mehta
Director, Mahindra Logistics Ltd
1A/1B, 4th Floor, Techniplex-I,
Techniplex Complex, Veer Savarkar
Flyover, Goregaon (W), Mumbai-400062

10. Mr. Vijay Murgesan Nadar
Operations Supervisor
Mahindra Logistics Ltd
1A/1B, 4th Floor, Techniplex-I
Techniplex Complex, Veer Savarkar
Flyover, Goregaon (W), Mumbai-400062

...Applicants/
Ori.Accused Nos.2 to 11

Versus

1. State of Maharashtra
through the office of Public
Prosecutor, High Court, Bombay

2. Municipal Corporation of Greater
Mumbai, Office of the
Assistant Commissioner 'S' Ward,
Municipal Office Building,
Mangatram Petrol Pump,
L.B.S. Marg, Bhandup (W),
Mumbai-400078

3. Mr. S. B. Mahajan
Adult of Mumbai Indian Inhabitant
Assistant Law Officer, Grade-II
Municipal Corporation of Greater
Mumbai, Office of the
Assistant Commissioner 'S' Ward,
Municipal Office Building,
Mangatram Petrol Pump,
L.B.S. Marg, Bhandup (W),
Mumbai-400078

.... Respondents

Mr Shirish Gupte, Senior Advocate a/w Mr Aditya Khandeparkar,
Ms Aekta Patel, Mr Gaurav Patole and Ms Mayuri Karekar i/b
Khandeparkar Law Office for the Applicants.

Ms MR Tidke, APP for respondent No.1-State.

Ms Purnima Kantharia a/w Mr DR Kawale for respondents No.2
and 3.

Coram: R. N. Laddha, J.

Date : 10 October, 2023.

P.C. :-

The challenge in this Criminal Application is to the order
dated 24.03.2017 of issuance of process by the learned
Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai,

in CC No.4103367/SS/2017.

2. Heard Mr Shirish Gupte, the learned Senior Counsel, appearing on behalf of the applicants; Ms MR Tidke, learned Additional Public Prosecutor for respondent No.1/State; and Ms Purnima Kantharia, learned Counsel for respondents No.2 and 3.

3. Upon perusal of the Order dated 24.03.2017 ('impugned order') passed in CC No.4103367/SS/2017 by the learned Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai, it is apparent that the impugned order is cryptic, unreasoned and passed without application of mind.

4. The learned Magistrate has affixed a rubber stamp engraved with the following words:

*“ Order
Perused complaint and
documents annexed. Heard.
Prima facie case has been
made out against the accused.
Hence, issue process against
accused as prayed.*

*Sd/-
Metropolitan Magistrate,
41st Court, Shindewadi,
Dadar,Mumbai.
24/3/17”*

5. The Magistrate needs to demonstrate such application of mind by giving reasons as to why the process is issued against the accused. Therefore, the impugned order of issuance of process is liable to be quashed and set aside. However, at the same time, it

must be considered that if the Magistrate did not fulfil his duty, the respondents Nos.2 and 3/ complainant should not be held responsible and should not have to endure any consequences due to the Magistrate's failure. As a result, the impugned order of issuance of a process, in CC No.4103367/SS/2017 by the learned Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai, is quashed and set aside, and the learned Magistrate is directed to pass an order afresh on its own merits in accordance with law.

6. The application, as such, stands disposed of. It goes without saying that, if necessary, the applicants are free to seek legal redress for their grievances, if the occasion so arises. It is made clear that this Court has not examined the merits of the case and all contentions of all the parties are left open.

R. N. LADDHA, J.