

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

Criminal Writ Petition No.4085 of 2022

1. Yogendra D. Patel

Age 64 years

Having address at 301, Hubtown

Solaris Premises CHS Ltd.

N.S.Phadke Marg, Andheri (East)

Mumbai-400069

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2. Rajesh Shah

Age 57 years

Having address at 1035 Hubtown

Solaris Premises CHS Ltd.

N.S.Phadke Marg, Andheri (East)

Mumbai-400069.

3. Sanjiv Vasant

Age :58 years

Having address at 108, Hubtown

Solaris Premises CHS Ltd.

N.S.Phadke Marg, Andheri (East)

Mumbai-400069.

4. Satish Kanodiya

Age : 70 years

Having address at 1033, Hubtown

Solaris Premises CHS Ltd.

N.S.Phadke Marg, Andheri (East)

Mumbai-400069.

5. Miller Thalakkottor

Age 42 years

Having address Hubtown

Solaris Premises Co-op.Hsg.Soc.Ltd.
N.S.Phadke Marg, Andheri (East)
Mumbai-400069.

.... Petitioners.

Versus

1. Hubtown Limited
Having its Registered Office at
Plaza Panchsheel, "A" Wing,
5th Floor, Hughes Road,
Behind Dharam Palace,
Grant Road (West),
Mumbai-400 007.

2. The State of Maharashtra ... Respondents

Mr Yashpal M.Thakur, Advocate a/w Mr Mukund Pandya for
the Petitioners.
Mr Aabad Ponda, Senior Counsel a/w Advocate Sajal Yadav a/
w Adv. Aayushya Geruja i/b Raj Raut for respondent No.1.
Mr MG Patil, APP for Respondent No.2/State.

Coram : R. N. Laddha, J.

Date : 22 December 2023.

P.C. :

Heard Mr Yashpal Thakur, the learned Counsel
appearing on behalf of the petitioners and Mr Aabad Ponda,
the learned Senior Counsel for respondent No.1.

2. The petitioners in this case arraigned as accused in a
private complaint filed by respondent No.1/original

complainant. The complaint led to the issuance of process for offences punishable under Sections 385, 447, 448, 452, 379, 323, 504, 506(2), read with 34 of the Indian Penal Code.

3. Mr Yashpal Thakur, the learned Counsel for the petitioners, submitted that the complainant's typed verification statement shows that the learned Magistrate did not record the verification in consonance with the requirements of Section 200 CrPC, but a typed copy was tendered before him and the learned Magistrate merely endorsed it. Accordingly, the learned Counsel contends that the order to issue process and subsequent proceedings are illegal and should be quashed. In support of his contentions, he relied on the following judgments: *(i) Bhargav Patel and Ors. Vs Tushar Maganlal Sonigra & Ors. WP No.2415/2022; and (ii) Prashant Harshad Valia Vs State of Maharashtra & Anr. Cri. Application No.718 of 2019*. The learned Counsel, however, states that he is not pressing for prayer clause (b) of this petition.

4. On the other hand, Mr Aabad Ponda, the learned Senior Counsel, submitted that an alternate and efficacious remedy u/s 397 CrPC is available to the petitioners, and the defective verification statement cannot be a ground which cannot be

taken up before the Sessions Court. He submitted that though this petition is maintainable, it certainly cannot be entertained as no extraordinary circumstances exist to invoke the inherent jurisdiction of this Court. He disputed the contention of the learned Counsel for the petitioners that the learned Magistrate did not record the verification statement but a typed copy was tendered and he merely endorsed it. Learned Senior Counsel submitted that the learned Magistrate recorded the verification statement in accordance with Section 200 CrPC, and thereafter signed it.

5. Admittedly, an alternate and efficacious remedy is available to the petitioners against the impugned order. The factual aspect regarding recording of the verification statement is in dispute. Hence, this Court is not inclined to invoke its writ jurisdiction.

6. In view of this, the petition is dismissed with liberty to the petitioners to file appropriate proceedings before the Sessions Court. The petitioners are entitled to seek condonation of delay. The interim protection granted in this petition shall continue to operate till 25 January 2024.

[R. N. Laddha, J.]