

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 683 OF 2006

Kavita Vijaykumar Munnot
Age: 41 years, Occ: Business & Housewife
R/o Vimal Bungalow, Rasani Nagar
Savedi, Ahmednagar.

..Petitioner

VERSUS

1. The State of Maharashtra
(Copy to be served on
Public Prosecutor of High Court of Judicature
of Bombay bench at Aurangabad).
2. Makarand S/o Madhav Kulkarni
Age: 38 years, Occ: Builder,
Proprietor of Mark Construction,
R/o Parekh Building, Mahajan Lane,
Ahmednagar.
3. Sau. Veena Chandramohan Kandepalli
Age: 47 years. Occ: Service,
4. Vishwanth S/o Kacharu Kharat
Age: 40 years, Occ: Service,

Both Respondent Nos.3 and 4
R/o Indira Chambers'
Flat Nos. 101, 102, 202 respectively,
Bajadpatti, Ahmednagar.

..Respondents

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Advocate for the Petitioner : Mr. R.R. Karpe
APP for Respondent/State : Mr. A.A.A. Khan
Advocate for Respondent No.2 : Mr. Gholap Ajit Manohar
Advocate for Respondent Nos.3 & 4 : Mr. C.S. Deshmukh

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CORAM : S.G. MEHARE, J.

DATED : SEPTEMBER 05, 2024

ORAL JUDGMENT :-

1. Heard the respective counsels.
2. The matter was heard on the last date. However, no order of issuing process was found placed on the record. Therefore, time was granted to the respective counsels to go through the record and produce the copy of the order of issuance of process passed of the learned Magistrate.
3. Learned counsel for the respondent made a statement that he has gone through the record of the trial Court. However, he did not find any order below Exhibit-1. It was just a roznama maintained directing to issue summons.
4. Considering the responsible statement of the learned counsel for the respondent, it appears that the learned Magistrate literally did not pass order exercising the powers under Section 204 of the Criminal Procedure Code. The learned Additional Sessions Judge has quashed and set aside the order of the Magistrate which was not in existence at all. In the circumstances, the sole remedy is to remit the matter to the learned Chief Judicial Magistrate to consider the complaint and pass an appropriate order, he feels appropriate. Hence, the following order :

ORDER

- (i) Writ petition is allowed.

- (ii) The impugned order of the learned Additional Sessions Judge, Ahmednagar passed in Criminal Revision Appeal No.95 of 2006 dated 07.10.2006 stands quashed and set aside.
- (iii) The case is remitted to the Court of learned Chief Judicial Magistrate, Ahmednagar for dealing with R.T.C. No.84 of 2006 according to the law.
- (iv) The accused need not to appear there.
- (v) Record and proceeding be returned to the Court of learned Chief Judicial Magistrate, Ahmednagar.
- (vi) Rule is made absolute in above terms.
- (vii) No order as to costs.

(S.G. MEHARE, J.)