



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2795 OF 2025

1. Hiralal S/o. Laxminarayan Jaiswal,
Age-70 years, Occu-Business & Agriculture,
2. Shivkumar S/o. Laxminarayan Jaiswal,
Age-67 years, Occu-Business & Agriculture

Both R/o. Laxmi Opset, Shivaji Road,
Village Kannad, Dist. Chh. Sambhajinagar ...**APPLICANTS**

VERSUS

1. The State of Maharashtra
Police Station Kannad, Tq. Kannad
Dist. Chh. Sambhajinagar
2. Shaikh Iqubal S/o. Shaikh Gani Patel,
Age-46 years, Occu-Business,
R/o. Patel Mandi, Khultabad,
Dist. Chh. Sambhajinagar

...**RESPONDENTS**
(R/2 is Ori. Complainant)

Mr. Rupesh Jaiswal, Advocate for the applicants (through VC)
Mr. C. V. Thombre, Advocate for the respondent No.2
Mr. K. S. Hoke Patil, APP for the respondents/State

CORAM : ABHAY J. MANTRI, J.

DATE : 04th DECEMBER, 2025

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and
heard finally with the consent of the respective parties at the stage of
admission.

2. By this application, the applicants/proposed accused Nos. 1 and 2 seek to invoke an inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure (for short the '*Cr. P. C.*') for quashing and setting aside the private complaint bearing RCC NO. 332/2019 for the offences punishable under Sections 416, 420, 468, & 470 of the Indian Penal Code (for short the '*IPC*') pending before the learned Judicial Magistrate First Class, Kannad (for short the '*learned Magistrate*') and issuance of process order dated 19-06-2025 passed therein.

3. The learned advocate for the applicants vehemently contended that the learned Magistrate has not applied his mind while passing the order of issuance of process dated 19-06-2025, as prima facie no offence has been made out against the applicants. Therefore, as per the law laid down by the Hon'ble Apex Court in *M/s JM Laboratories and others Vs State of Andhra Pradesh and another*, passing of the order of issuance of the process is illegal and liable to be quashed and set aside.

4. *Secondly*, he submitted that, as per the complainant's case, the alleged document was executed 35 years ago and was averred in the complaint. He drew my attention to the complaint in that regard and submitted that, on account of the delay, the complaint is also liable to be rejected. However, the learned

Magistrate has not considered the said facts and erred in passing the order.

5. *Thirdly*, he drew my attention to a police report submitted as per section 202 of the Cr. P. C. before the learned Magistrate, and he also drew my attention to the observations made therein. The enquiry officer has categorically observed that for more than 35 years, the applicants have been in possession of the disputed property. Therefore, there is no substance in the complaint lodged by respondent No. 2, and as such, the complaint is liable to be quashed and set aside. To buttress his submission, he has relied upon judgments as follows:

1. *Pepsi Food Ltd and another Vs Special Magistrate and others 1998 AIR SC 128*
2. *Dhariwal Tobacco Products Ltd and others Vs State of Maharashtra 2009 AIR SC 1032*
3. *Mohit Alias Sonu and others Vs State of UP AIR 2013 SC 2248*
4. *Prabhu Chawla Vs State of Rajasthan and another 2016 AIR SC 4245*
5. *M/s JM Laboratories and others Vs State of Andhra Pradesh and another*
6. *Lallankumar Singh and others Vs State of Maharashtra 2022 LiveLaw (SC) 833*

6. The learned APP for the State submitted that the police have filed the report stating that there is no substance in the complaint lodged by respondent No. 2. Therefore, he submitted that as per the police report, no ingredients of sections 416, 420, 468, & 470 of the IPC are attracted against the applicants.

7. As against, the learned advocate for respondent No.2 submitted that initially the learned Magistrate disposed of the complaint under Section 256 of the Cr. P. C. which he has challenged before the learned Additional Sessions Judge and the learned Additional Sessions Judge by order dated 13-02-2024 allowed the revision and quashed and set aside the order dated 07-02-2023 passed by the learned Magistrate and “*directed the learned Magistrate to restore the case to its original number and after issuing notices to both the parties, proceed with the case in accordance with the law.*” However, the applicants have not challenged the said order; therefore, it cannot be said that the learned Magistrate's order for the issuance of process is illegal or unjust. But the learned Magistrate has only followed the direction given by the learned Additional Sessions Judge. Hence, he urged for the dismissal of the application.

8. To buttress his submission, he has relied upon the judgment of this court in Rajiv Gandhi and others Vs the State of Maharashtra and Ors 2014 All MR (Cri) 529 and submitted that once the learned Magistrate has exercised the discretion after considering all relevant aspects of the matter, his discretion is not liable to be interfered with by the Superior Courts. Therefore, he submitted that the application is liable to be dismissed.

9. Perused the order dated 19-06-2025. I would like to reproduce the same as under:

“The file is restored and taken on board as per the order of the Hon’ble Sessions Court, Aurangabad in Cri. Revisión No.176/2023. Issue notice to the proposed accused persons.”

10. Bare perusal of the above order, it appears that the learned Magistrate has not assigned the reasons while passing the order. The summoning order is totally a non-speaking one. In fact, the learned Magistrate has to apply his mind and pass the speaking order. But he failed to do so and passed the order. Therefore, the fact itself indicates that the order passed by the learned Magistrate is contrary to the mandate laid down by the Hon’ble Apex court in *M/s JM Laboratories* (supra) and therefore, cannot be sustained in the eyes of law and on that ground alone, the said order is liable to be set aside.

11. *Apart from this*, even assuming that the learned Additional Sessions Judge has passed the order on 13-02-2024 and directed the learned Magistrate to restore the complaint to its original number. Similarly, observed that, after issuance of notice to both parties, the case should proceed in accordance with the law. It is pertinent to note that respondent No. 2 has challenged the order about the disposal of the complaint under Section 256. Therefore, it was incumbent on the learned Additional Sessions Judge to consider

the said order on its merits, and, at the most, the learned Sessions Judge could set aside the said order and restore the matter. However, it was improper to direct the learned Magistrate to issue notice. In fact, it is the discretion of the learned Magistrate, as submitted by the learned counsel for the applicants himself, to pass an order for the issuance of process after going through the record and the allegations in the complaint. But, the passing of the order by the learned Additional Sessions Judge, thereby encroaching on the powers of the learned Magistrate to consider the complaint. Therefore, in my view, the order passed by the learned Additional Sessions Judge is illegal and perverse in respect of clause No. 3 of the operative part of the order to direct the learned Magistrate to issue notices.

12. I would like to reproduce paragraph 35 of the judgment in *INOX air products limited now known as INOX air products private limited and another Vs the State of Andhra Pradesh* observed in para 8 of the judgment in M/s. JM Laboratories (supra) as under

35. This Court has clearly held that summoning of an accused in a criminal case is a serious matter. It has been held that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. This Court held that the Magistrate is required to examine the nature of allegations made in the complaint and the evidence, both oral and documentary in support thereof and as to whether that would be sufficient for proceeding against the accused. It has been held that the Magistrate is not a silent spectator at the time of recording of preliminary evidence before summoning the accused.

13. I would like to reproduce para 21 & 22 of the judgment in *Pepsi Food Ltd. (supra)* as under:

21. *The questions which arise for consideration are if, in the circumstances of the case, the appellants rightly approached the High Court under [articles 226](#) and [227](#) of the Constitution, and if so, whether the High Court was justified in refusing to grant any relief to the appellants because of the view which it took of the law and the facts of the case. We have, thus, to examine the power of the High Court under [Articles 226](#) and [227](#) of the Constitution and section 482 of the Code.*

22. *It is settled that the High Court can exercise its power of judicial review in criminal matters. In [State of Haryana and others vs. Bhajan Lal and others](#) 1992 Supp (1) SCC 335, this court examined the extraordinary power under [article 226](#) of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the facts and circumstances of each case, but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused. Under [Article 227](#), the power of superintendence by the High Court is not only of an administrative nature but is also of a judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure, The power conferred on the High Court under [Articles 226](#) and [227](#) of the constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. **When the exercise of powers could be under [Article 227](#) or Section 482 of the Code**, it may not always be necessary to invoke the provisions of [Article 226](#). Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.*

14. Also, I would like to reproduce para 28,29 & 30 of the judgment in *Lallankumar Singh (supra)* as under:

“28. The order of issuance of the process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of [Sunil Bharti Mittal vs. Central Bureau of Investigation](#), which reads thus:

“51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate, taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to the commencement of a criminal proceeding. If the Magistrate 9 (2015) 4 SCC 609 taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to the grant or refusal of process, and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process, and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance.

It is these words which amply suggest that an opinion is to be formed only after due application of mind, that there is sufficient basis for proceeding against the said accused, and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion

that there is a prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.”

29. A similar view has been taken by this Court in the case of [Ashoke Mal Bafna](#) (supra).

30. In the present case, leaving aside there being no reasons in support of the order of the issuance of process, as a matter of fact, it is clear from the order of the learned Single Judge of the High Court, that there was no such order passed at all. The learned Single Judge of the High Court, based on the record, has presumed that there was an order of issuance of process. We find that such an approach is unsustainable in law. The appeal, therefore, deserves to be allowed.”

15. Apart from the above, I have gone through the complaint. Prima facie, it seems that it does not attract the ingredients of sections 416, 420, 468 & 470. However, the allegations in the said complaint appear vague and omnibus. Therefore, it would not be proper to force the applicants to go through the tribulation of the trial on the basis of general and omnibus allegations which cannot be manifest in the situation to attract the ingredients of sections 416, 420, 468 & 470.

16. Besides, peruse the report submitted by the Enquiry Officer under Section 202 of the Cr. P. C. before the learned Magistrate, wherein the enquiry officer has categorically observed that during the enquiry, he found that the sale deed executed was found to be genuine, and therefore, he does not find that the

applicants have cheated or prepared a forged document in respect of the property in dispute. Similarly, he observed that for the last 35 years, the applicants have been in possession of the said disputed property and therefore, held that he does not find any substance in the complaint. But, with a view to harassing the applicants, the said complaint was filed.

17. Having considered the above discussion and the police report under section 202, as well as averments in the complaint, prima facie it appears that no case is made out for issuance of process for the offences punishable under Sections 416, 420, 468 & 470. Similarly, it seems that, according to respondent No. 2, the alleged document was executed on 16-04-1987. Likewise, he failed to state in the complaint how he acquired title to the disputed property, how he lodged the complaint, and how the applicants defrauded him; therefore, in my view, the applicants have made out a case to invoke the inherent jurisdiction of this court to quash the proceedings.

18. It further appears that the learned Magistrate has not assigned the reasons while passing the order. The summoning order is totally a non-speaking one. In fact, the learned Magistrate has to apply his mind and pass the speaking order. But he failed to do so and passed the order. Therefore, the fact itself indicates that the order passed by the learned Magistrate is contrary to the mandate

laid down by the Hon'ble Apex court in *M/s JM Laboratories* (supra) and therefore, cannot be sustained in the eyes of law and on that ground also, the said order is liable to be set aside.

19. Consequently, the criminal application is allowed in terms of the prayer clause (B). As a sequel, the proceeding bearing RCC No. 332/2019 is hereby quashed and set aside. The rule is made absolute. No order as to cost.

[ABHAY J. MANTRI, J.]

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