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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.5014 OF 2024
IN
CRIMINAL WRIT PETITION NO.683 OF 2006**

Makarand Madhav Kulkarni

....APPLICANT

VERSUS

1. The State of Maharashtra,
thr. Officer In Charge,
Police Station, Tophkhana,
Ahmednagar, Dist. Ahmednagar

2. Veena Chandramohan Kandepalli

3. Vishwanath Kacharu Kharat

4. Kavita Vinaykumar Munnot

....RESPONDENTS

.....

Mr S. J. Salunke, Advocate for Applicant

Mr V. M. Lomte, APP for Respondent No.1/State

Mrs C. S. Deshmukh, Advocate for Respondent Nos.2 and 3

.....

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 19 NOVEMBER 2025

ORDER :-

1. By this application, the applicant is praying for modification of the judgment dated 05/09/2024, passed by this Court in Criminal Writ Petition No.683/2006, thereby setting aside the order dated 07/10/2006 passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Revision Application No.95/2006 and

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remitting the case to the Court of learned Chief Judicial Magistrate, Ahmednagar for dealing with R.T.C. No.84/2006 according to law.

2. When this application was listed on 24/02/2025, this Court had observed while issuing notices to the respondents that Criminal Writ Petition No.683/2006 was disposed of vide order dated 05/09/2024 by observing that, no order of issuance of process was brought to the notice of this Court though the Court asked for it, and therefore, this Court had allowed the said writ petition only on the ground that the learned Sessions Court, while disposing of Criminal Revision Application No.95/2006 allowed the said revision application by setting aside the order passed by the Magistrate of issuance of process, which was not at all in existence.

3. Heard learned Advocate Mr Salunke for the applicant, learned APP Mr Lomte for respondent No.1 and Mrs Deshmukh, learned Advocate for respondent Nos.2 and 3.

4. Learned Advocate Mr Salunke for the applicant submits that, initially respondent No.4/complainant had filed complaint against four accused persons before the learned Chief Judicial Magistrate, Ahmednagar for the offence punishable under Sections 406, 420, 341 read with Section 34 of the Indian Penal Code and under Section 3, 4,

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5, 7, 10(2), 13(1)(2)(3) of Maharashtra Ownership Flats Act, 1963. The applicant was co-accused along with respondent Nos.2 and 3, who were chargesheeted before the learned Chief Judicial Magistrate, Ahmednagar. He further submits that, in fact on the charge-sheet itself, the learned Chief Judicial Magistrate, Ahmednagar passed the order on Exh. 1, which reads thus :-

"Perused the charge sheet, there are sufficient grounds to proceed against the accused, therefore, register it as Reg. Cri. Case No.84/2006 punishable under sec.406, 420, 341, 34 of I.P.C. 3,4,5,7(2),13(1),(3) of the Maharashtra Ownership Flats Act, 1963

Issue summons / B.W. to the accused."

5. He further submits that the present applicant, alongwith respondent No.2/accused Veena Chandramohan Kandepalli and respondent No.3/accused Vishwanath Kacharu Kharat had filed criminal revision application bearing Criminal Revision Application No.95/2006 under Section 397 of the Code of Criminal Procedure for questioning the aforesaid order of issuance of process before the learned Additional Sessions Judge, Ahmednagar, who allowed the said criminal revision vide order dated 07/10/2006. The said order was assailed by informant/respondent No.4/Kavita Vinaykumar Munnot before this Court in Writ Petition No.683/2006. This Court, while passing the order on 05/09/2024 had observed that, no order of

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issuance of process was found place on record and the learned Advocate for respondents therein also made submission that he also did not find any order below Exh.1 and it was just a roznama maintained directing to issuance summons. Based on the said statements, it was held that learned Magistrate literally did not pass order exercising the powers under Section 204 of the Code of Criminal Procedure. Therefore, this Court had held that learned Additional Session Judge has quashed the order of learned Judicial Magistrate, which was not in existence at all. While observing so, this Court had accordingly allowed the writ petition on 05/09/2024, thereby quashing the order dated 07/10/2006, passed by the learned Additional Sessions Judge, Ahmednagar in Criminal Revision Application No.95/2006 and remitting the case to the Court of learned Chief Judicial Magistrate, Ahmednagar for dealing with R.T.C. No.84/2006 according to law. However, now, Mr Salunke has brought the order passed by the learned Judicial Magistrate, Ahmednagar on Exhibit-1 on the charge-sheet before this Court, which was not earlier pointed out to this Court. Therefore, according to Mr Salunke, though this Court had disposed of Writ Petition No.683/2006 on 05/09/2024, since it was based upon incorrect submissions on the record, the said order can be altered or recalled. He further places reliance upon the order passed by the

Hon'ble Apex Court dated 07/03/2022 in **Ganesh Patel Vs. Umakant Rajoria** (Special Leave Petition (Cri.) No.9313/2021), wherein the Hon'ble Apex Court held that *“the application for recall of the order was maintainable as it was an application seeking procedural review, and not substantive review to which Section 362 of the Code of Criminal Procedure, 1973, would be attracted. On the aspect of difference between recall and review and when an order of recall can be passed reference can be made to Budhia Swain and others Vs. Gopinath Deb and others.”* By observing so, the Hon'ble Apex Court held that the High Court was right while recalling the order.

6. In this case also, as the learned Advocate representing the concerned respondent could not point out the order of issuance of process to this Court, this Court was made to believe that the learned Sessions Court, while passing his order dated 07/10/2006 in Criminal Revision Application No.95/2006, has quashed the order which was not at all in existence. As pointed out earlier that, since there was an order passed on charge-sheet by the learned Judicial Magistrate, Ahmednagar, there arises contingency to recall the order dated 05/09/2024, passed by this Court in Writ Petition No.683/2006, more importantly, having regard to the judgment delivered by the Hon'ble Apex Court in **Ganesh Patel** (supra).

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7. In view of the above, this application is allowed. The order dated 05/09/2024, passed by this Court in Writ Petition No.683/2006 is hereby recalled and the said writ petition is reopened and be kept for further consideration.

8. However, as it was noticed by this Court on 14/10/2025 that the contesting respondent i.e. non-applicant No.4/petitioner, though duly served, had not appeared on that day before the Court, it was made clear that, on the next date, even in her absence, the application shall be decided on merits. Even today also, nobody appears on behalf of non-applicant No.4, who was the petitioner in Writ Petition No.683/2006.

9. Since the petition is hereby reopened, in order to give chance to petitioner to raise her grounds as regards her Criminal Writ Petition No.683/2006, the notice is being issued to petitioner, returnable on 17/12/2025.

[SUSHIL M. GHODESWAR, J.]

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