

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

CRIMINAL WRIT PETITION NO.3626 OF 2022

1. New India Assurance Company Ltd.,
(Head Office) Through Power of Attorney
Holder, Mr. Ravindra Bodwade, Age-59
(Approx.) Regional Manager), New India
Assurance Building, MRO IV, 87th Mahatma
Gandhi Road, Fort, Mumbai - 400 001.
2. Mr. Kirti Patel (Administrative Officer (D),
Age- 60 years (Approx.), MRO IV, 12th Floor,
New India Assurance Building, 17-A,
Cooperage Road, Mumbai - 400 039.
3. Mr. Vivek Kalla,
Age- 52 years (Approx.),
Senior Divisional Manager, MRO IV, 12th
Floor, New India Assurance Building,
17-A, Cooperage Road, Mumbai - 400 039.
4. Mr. Vivek Deshpande
Age- 62 years (Approx.), MRO IV, 6th Floor,
New India Assurance Building, 17-A,
Cooperage Road, Mumbai - 400 039.
5. Mr. Ravi Reddy,
Age- 60 years (Approx.),
Deputy General Manager, MRO IV, 6th Floor,
New India Assurance Building, 17-A,
Cooperage Road, Mumbai - 400 039. ...Petitioners

Versus

1. Samraj Gold Exports Pvt. Ltd.
(One Star Export House), 907, Jewel World,
9th Floor, Cotton Exchange, 175 Kalbadevi,
Zaveri Bazar, Mumbai- 400 002.
Through its Director Mr. Rakesh Samanta.

2. The State Maharashtra
To be served through the Public
Prosecutor High Court Bombay. ...Respondents

**WITH
CRIMINAL WRIT PETITION NO.6246 OF 2024**

Shri Kaushal Madanlal Kishore
Age-57 years, adult Indian Inhabitant
Having office at 920, 9th Floor, A-wing,
Corporate Avenue, Sonawala Road,
Goregaon (East), Mumbai- 400 063. ...Petitioner

Versus

1. Samraj Gold Exports Pvt. Ltd.
(One Star Export House), being
represented through Shri Rakesh Samanta
907, Jewel World, 9th Floor, Cotton
Exchange, 175 Kalbadevi, Zaveri Bazar,
Mumbai -400 002.
2. The State Maharashtra
(Through the Office of the Public Prosecutor) ...Respondents

**WITH
CRIMINAL WRIT PETITION NO.525 OF 2023**

Samraj Gold Exports Pvt. Ltd.
having its registered address 907, Jewel
World, 9th Floor, Cotton Exchange, 175
Kalbadevi, Zaveri Bazar, Mumbai- 400 002.
Through its Managing Director
Mr. Rakesh Rabindra Samanta.
Age - 38 years, Occ- Business
(M.D. Samraj Gold Exp.Pvt.Ltd.)
R/o. Flat No.702, 7th floor,
Shatrunjay Tower CHS, MMGS Marg,
Naigaon, Dadar (E), Mumbai- 400014. ...Petitioner

Versus

1. Atul Sahai (Chairman)
New India Assurance Building
Head Office- New India Assurance Building
MRO IV, 87th Mahatma Gandhi Road,
Fort, Mumbai- 400001.
2. Mrs. J. Jayanti
General Manager Misc. Insurance.
New India Assurance Building
MRO IV, 87th Mahatma Gandhi Road,
Fort, Mumbai- 400001.
3. Mrs. Nirmala Shetty
Head of Claim Hub MRO IV,
13th Floor, New India Building
Cooperage Road, Mumbai-39
4. The State of Maharashtra,
Through (Sr. Police Inspector
L.T. Marg Police Station, Mumbai) ...Respondents

Mr. Surel Shah, Sr. Advocate a/w Mr. Vishnudutt Mishra & Mr. Ashish U. Mishra, for the Petitioners in Cri.WP/3626/2022 and for Respondent Nos.1 to 3 in Cri.WP/525/2023.

Mr. Kripashankar Pandey a/w Mr. Meet Gandhi, for the Petitioner in Cri.WP/6246/2024.

Mr. Gauraj Shah a/w Mr. SK Atique Ur Rehman i/by Mr. M.M. Chaudhary, for the Petitioner in Cri.WP/525/2023.

Mr. Aseem Naphade a/w Mr. SK Atique Ur Rehman Shaikh i/by Mr. M. M. Chaudhary, for the Respondent in Cri.WP/3626/2022 and Cri.WP/6246/2024.

Ms. Prajakta P. Shinde, APP for the Respondent-State.

Mr. Chintala Nagasai, (through V.C.), Officer of New India Assurance Co. Ltd., present.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 31st JANUARY, 2026
PRONOUNCED ON : 17th APRIL, 2026

JUDGMENT:

. These Petitions filed under Article 227 of the Constitution of India and under Section 482 of the Code of Criminal Procedure are being decided by this common Judgment as the parties and the questions involved in the Petitions are same. Additionally, the Petitions are questioning two Orders passed in two separate Criminal Revision Applications but both Revisions impugning the same Order of issue process dated 07.04.2022, passed by the 28th Court of Metropolitan Magistrate, at Esplanade, Mumbai in a complaint case No.2800098/SW/2020 filed by M/s Samraj Gold Exports Pvt. Ltd. (**“the complainant”**) against nine accused.

1.1 Petitioner in Writ Petition No.523/2023 is the original complainant and Respondent Nos.1, 2 and 3 therein are the original accused Nos.2, 5 & 7. Petitioners in Writ Petition No.3626/2022 are the original accused Nos.1, 3, 4, 6 and 9. Petitioner in Writ Petition No.6246/2024 is the original accused No.8. (*Hereinafter parties are being referred to by their original status in the complaint*).

2. Writ Petition No.3626/2022 has been directed against the Order dated 11.08.2022 passed by the learned Additional City Civil and Sessions Judge, Greater Mumbai in Criminal Revision Application No.488 of 2022. Thereby, the revisional Court dismissed that revision application to the extent of A-1, A-3, A-4, A-6 and A-9 upholding against them the said Order of issue process for the alleged offence punishable under Sections 406, 467, 468, 471, and 34 of I.P.C. Writ Petition No.523/2023 has been filed by the complainant challenging the same Order dated

11.08.2022, thereby, the revisional Court partly allowed that revision application to the extent of A-2, A-5 and A-7 setting aside the said Order of issue process against them.

2.1 Writ Petition No.6246/2024 has been filed by A-8 impugning an Order dated 05.04.2023, in Criminal Revision Application No.639 of 2022, passed by another learned Additional Sessions Judge, City Civil and Sessions Court Greater Bombay, thereby, said revision application filed by A-8 was dismissed upholding against him the same impugned Order of issue process dated 07.04.2022.

3. Heard Mr. Shah, learned Senior counsel appearing for A-1 to A-7 and A-9, Mr. Pandey, learned counsel appearing for A-8 and Mr. Naphade with Mr.Rehman Shaikh learned counsel appearing for the complainant and Ms. Shinde, the learned APP appearing for the Respondent-State. Perused the entire record.

4. The complainant's case is that it deals in gold business. Mr. Rakesh Samanta has been the director of the complainant. Between 2001 and till 2019, the complainant used to insure its goods with A-1. The A-2 was Chairman of A-1. The A-3 was an Administrative Officer, MRO-IV of A-1. The A-4 was Divisional Manager of MRO-IV of A-1. The A-5 was General Manager and the A-6 was Divisional Head of A-1. The A-7 was Head of the claim department and A-9 was the Dy. General Manger of A-1. Rakesh Samanta knew the accused.

4.1 The complainant filed the said complaint on 02.12.2020 against the accused persons alleging an offence under Sections 467, 468, 469, 471 and 406 of I.P.C. In the complaint it was stated that on 13.05.2019 the Director-Rakesh Samanta had filed an F.I.R. alleging that the complainant had entrusted 20.7 kgs. of gold to Anil Maji and his associates to make jewellery/ornaments. However, Anil Maji and his associates misappropriated that gold by cheating. Said gold was insured with A-1 (*vide* policy of insurance dated 14.01.2019). After lodging the F.I.R., the complainant filed the insurance claim towards the lost gold property.

4.2 It was alleged that in-spite of accepting the necessary premium and issuing the policy of insurance, the accused persons avoided to process and pay the insurance claim finding faults with the claim Application filed by complainant. For that purpose, appointment of surveyor was delayed, the record of the insurance policy was tampered with, false documents of insurance policy were prepared and even the original sum insured/risk covered was reduced by the accused persons behind the complainant's back and without his consent only to claim that the information provided by the complainant was faulty and misrepresenting.

4.3 It is alleged that, in his Survey Report dated 01.10.2019, at one place, the A-8 has deliberately, with *mala fide* intention and ulterior motive wrongly recorded that name of the Anil Maji was not mentioned (in the insurance proposal/policy as an employee of the complainant). However, at the another place, the A-8 mentions that since April 2017 Anil Maji was working with the complainant as goldsmith (*Karigar*). Further, A-8 stated that Anil

Maji was appointed in the year 2019. It is alleged that, finally, A-8 recommended to reject the insurance claim at the instance of the other co-accused.

4.4 Thus, the accused persons committed the alleged offence punishable under Sections 467, 468, 469, 471 and 406 of I.P.C. It was alleged that the said crime has been committed by the accused persons by hatching a criminal conspiracy and in furtherance of their common intention. The complainant reported about the aforesaid crime to L.T. Marg Police Station as well as the DCP CID Bombay and requested for action in accordance with law. Said police, however, refused to register an F.I.R., citing a reason that, it was a civil dispute/transaction *vide* letter dated 29.10.2020. Therefore, the complainant filed the said complaint under Section 156 (3) of Cr.P.C.

5. By Order dated 23.12.2020 the complaint was posted for examination of the complainant and his witnesses under Section 200 of Cr.P.C. On 06.04.2021, the learned Advocate for the complainant provided a typed verification statement of the complainant. The learned Magistrate verified the complaint through Rakesh Samanta and obtained his signature on the typed verification statement. Further, the learned Magistrate passed an Order for investigation under Section 202 of Cr.P.C. Accordingly, the matter was referred to L.T. Marg Police Station. Thereafter, Mr.Vivek Bhosale, Police Inspector (Administration) and Investigation Officer, L.T. Marg Police Station submitted his report dated 22.12.2021 before the learned Magistrate. Therein, Mr. Bhosale, I.O. concluded that, the offence punishable under

Sections 406, 420, 465, 468, 471 and 120B of I.P.C. has been made out against the accused persons.

6. In the backdrop, the learned Magistrate passed the impugned Order to issue process which reads :-

“1) Perused complaint and verification of complainant filed u/Sec.200 of Cr.P.C. Heard Ld. Advocate for complainant. Record shows that complaint has been made alleging that accused has committed an offence punishable under Section 406, 467, 468, 469, 471, 34 of the Indian Penal Code.

2) From the available evidence on record at this stage, I found prima facie involvement of accused in the alleged offence and thereby it prima facie it seems that accused have committed offences punishable u/Sec.406, 467, 468, 471 r/w 34 of the Indian Penal Code. Thus being there are sufficient grounds to proceed against accused, I pass following order.

ORDER

1. Issue process against accused for the offence punishable under Sections 406, 467, 468, 471 r/w 34 of the Indian Penal Code vide section 204 of the Code Of Criminal Procedure.

2. The complaint is dismissed against Accused U/sec. 469 of the Indian Penal Code vide section 203 of the Code of Criminal Procedure.”

7. Aggrieved by the Order of issue process, the A-1 to A-7 and A-9 filed the Criminal Revision Application Nos.488/2022 and the A-8 filed the Criminal Revision Application No.639/2022. The Revisions were decided by different learned judges as noted above.

7.1 In the impugned Order dated 11.08.2022 in Criminal Revision Application No.488/2022, the learned Additional Sessions Judge observed that since beginning, the complainant was in contact with A-3 Kriti Patel. As per the instructions of A-3, from time to time, the complainant provided necessary documents to A-3, paid the premium amount and completed the process of the insurance policy including addition of the insurance of Rs.2.5 crores for transit and Rs.2.5 crores for fidelity totaling to Rs.5 crores. Thereafter, Anil Maji cheated the complainant. Therefore, FIR was lodged by complainant with L.T. Marg Police Station. Further, the complainant filed the insurance claim. However, the complainant did not get satisfactory response from the accused side. This fact is also confirmed by the police report under Section 202 of Cr.P.C. Therefore, the learned Additional Sessions Judge observed that, the accused persons had received the premium for the insurance policy of Rs.7 crores but they reduced the policy risk. It was observed that said allegations were revolving around A-3, A-4, A-6 and A-9.

Insofar as the allegations against A-7 Nirmala Shetty are concerned, the learned Additional Sessions Judge observed that, it was pointed out to A-7 to appoint a surveyor within 72 hours from filing of the insurance claim, but in collusion with other accused, A-7 did not appoint the surveyor. As alleged, A-8 had submitted a false survey report in spite of availability of necessary documents. However, the learned Judge observed that, said allegation does not show A-7's complicity in the commission of the alleged offence. Ultimately, the learned Judge observed that, there is no sufficient material against A-2, A-5 and A-7. However, the learned

Judge observed that, there is a prima facie case against the A-1, A-3, A-4, A-6 and A-9. As a result, the learned Judge dismissed the Criminal Revision Application No.488 of 2022 in respect of A-1, A-3, A-4, A-6 and A-9, but, partly allowed the same in respect of A-2, A-5 and A-7.

7.2 While dismissing the A-8's Criminal Revision Application No.639 of 2022 by the impugned Order dated 05.04.2023, the learned Additional Sessions Judge observed and held that specific allegations have been made against A-8 that he has acted mischievously along with the other accused persons and his insurance policy was deliberately tampered. The officials of A-1 have committed conspiracy with surveyor to hide their fraud, negligence and manipulated the policy and tampered with evidence, to reject the insurance claim by the complainant. From the police report it appears that A-8 has submitted his report to refuse the claim of the complainant, in respect of the Insurance policy no.13100046190782000001. But there are no documents whether the same policy was in existence and the A-1 has not given any explanation or the documents about the said policy. On the other hand, the complainant is claiming insurance on the basis of the policy no.1310004618000000032, but, the A-8 has submitted the report to reject the claim on the basis of the insurance policy no.13100046190782000001. There are allegations against A-8 that he has done the conspiracy with the other office bearers of the insurance company. So, considering the nature of the allegations, the parties are required to lead the evidence in support of their allegations. The prima facie allegations show the involvement of A-8. There is no explanation about certain facts. So, considering

the same, there is no substance in the contentions of A-8 that there is no prima facie case against him to issue process and therefore the said Order requires to be set aside.

8. Mr. Shah, the learned Senior Counsel for A-1 to A-7 and A-9 submitted that, earlier, the complainant had filed a similar complaint with the same police station alleging the same offence against the accused persons. Said complainant resulted in filing of a closure report. Because, there was no evidence showing that the accused persons had committed the alleged offence. He submitted that, the allegations made in the instant complaint do not constitute the alleged offences. No document is produced by the complainant to demonstrate the alleged fraud played by the accused persons. Mr. Shah submitted that the complaint is filed out of vengeance for the insurance company did not approve the insurance claim as desired by the complainant. He submitted that considering the matter as a whole, the dispute involved in this case is nothing but about the deficiency in service on the part of A-1. In other words, this is a case of civil dispute but certainly not of criminal nature. However, the complainant gave this matter a colour of crime with an ulterior motive and as an arm twisting exercise to get the civil liability fulfilled as wanted by him. The complainant has suppressed the fact of filing the Consumer Complaint by him. This conduct supports the contention of the accused persons that this is a civil dispute. Mr. Shah submitted that the complainant has misled the Investigating Officer in respect of the document of insurance policy. However, the learned Sessions Judge failed to consider the aforesaid facts. Mr. Shah vehemently submitted that, the contents of the complaint in

question were not verified through Rakesh Samanta by putting him in the witness box. Said contents were verified with the help of a ready made/typed verification statement produced by the learned Advocate for the complainant. This practice is illegal. The learned Additional Sessions Judge did not consider this illegality. Therefore, the impugned Order dated 11.08.2022 thereby dismissing the Criminal Revision Application No.488 of 2022 to the extent of A-1, A-3, A-4, A-6 and A-9 is illegal and it is liable to be set aside. However, Mr. Shah has supported the impugned Order dated 11.08.2022 stating that it is lawful to the extent it exonerated A-2, A-5 and A-7 from the alleged offence.

To buttress these submissions Mr. Shah, learned Senior Counsel has relied upon following reported cases : i) *Deepak Gaba v. State of U.P.*, reported in (2023) 3 SCC 423 and ii) *Usha Chakraborty v. State of W.B.*, reported in AIR 2023 Supreme Court 688.

9. Mr. Pandey, the learned counsel for A-8 submitted that the A-8 had no role in issuance of the insurance policy in question nor the revised policy. A-8 came into picture only after he was appointed by A-1 to survey into the matter and ascertain the loss. Neither in the complaint nor in the verification statement, the relationship of A-8 with other accused persons has been set out to demonstrate his complicity in the alleged offence.

Mr. Pandey submitted that, the Survey Report was based on the documents provided by the office of A-1. In the Survey Report, A-8 has specifically referred to both the policies including the risk

covered in the original policy dated 14.01.2019 and the reduced risk covered in the subsequent policy dated 03.05.2019. While finalising the Survey Report, A-8 has observed that, since the document was in dispute, he had considered that document from the side of Insured as well as the Insurer. However, A-8 has not based the Survey Report on the subsequent policy. Besides the controversy as to whether Anil Maji, the goldsmith was included in the policy proposal as the employee of the complainant or not, A-8 has independently considered the fact of consecutive delivery of raw gold to Anil Maji for making the fine ornaments but without fulfilling the job of the earlier consignment. This constituted complete negligence on the part of the complainant. Therefore, on merits also the claim was proposed to be repudiated.

Mr. Pandey pointed that, as provided by Regulation 12 of the Insurance Regulatory And Development Authority of India (Insurance Surveyors and Loss Assessors) Regulations, 2015, there has been an option for appointment of the Surveyor and Loss Assessor either at the instance of the Insurer or the Insured. The complainant himself could have appointed the Surveyor invoking said Regulation 12, however, he did not. Therefore, there is no substance in the allegations about the delay in appointment of the Surveyor/A-8 and that A-8 has issued the Survey Report at the instance of other accused.

Mr. Pandey highlighted that there are no averments and allegations sufficient to constitute the alleged offence against A-8. There is no material to attract the offence of Section 406. No process has been issued under Section 420 of I.P.C. There is no

allegation of making false document either in the complaint or in the verification. No process has been issued for the offence of Section 465 of I.P.C. Therefore, the question of issuing process for the aggravate offence of forgery, *i.e.*, under Section 467 of I.P.C. does not arise. The verification statement was recorded but mechanically and without complying with Section 200 of Cr.P.C. The Order of the issue process does not record the reasons to conclude that the alleged offence was made out against A-8 to issue the process against him. The present complaint is nothing but the pressurizing tactic by the complainant to compel the accused persons to pay him the claimed amount or to settle the dispute. As such, the impugned Order is illegal.

Mr. Pandey has relied on following cases to support his case.

i) *Lalankumar Singh v. State of Maharashtra*, reported in 2022 SCC OnLine SC 1383, ii) *Manju Gupta v. M.S. Paintal*, reported in (1982) 2 SCC 412, iii) *Amarnath Baijnath Gupta v. Mohini Organics Pvt. Ltd.*, reported in 2008 SCC OnLine Bom 1194, iv) *Chirag Sen v. State of Karnataka* reported in 2025 SCC OnLine SC 1518 and v) *Mohd. Ibrahim v. State of Bihar* reported in (2009) 8 SCC 751

10. Mr. Naphade and Mr. Rehman Shaikh both the learned counsel appearing for the complainant have pointed the list of the dates with events and submitted that despite the insurance policy was purchased disclosing proper information in the insurance proposal and on payment of the required premium, the accused party reduced the insurance risk ignoring the proposal to increase the risk. This the accused persons did on purpose, *i.e.*, to deny the

legitimate insurance claim of the complainant. For that end the accused misappropriated the insurance premium paid by the complainant and also prepared false documents and valuable security. It is submitted that all the necessary facts have been stated in the complaint which clearly made out the case of the offence alleged against all the accused. Said allegations were supported with the documents enclosed with the complaint. Whatsoever shortcoming is pointed in respect of the verification of the complaint, the same is removed by the investigation report filed by the police under Section 202 of Cr.P.C. However, the learned Additional Sessions Judge set aside the issue process Order against A-2, A-5 and A-7, which is erroneous. Therefore, to that extent the impugned Order dated 11.08.2022 is illegal and it may be quashed and set aside. Accordingly, the Order of issue process be restored as against the said accused.

To support these submissions, Mr. Naphade has cited the following decisions. i) *Nirman Raltors & Developers Ltd. v. Amrutlal Premji Patel* reported in 2019 SCC OnLine Bom 2378, ii) *Kamal Shivaji Pokarnekar v. State of Maharashtra* reported in (2019) 14 SCC 350, iii) *Sm. Madhu Loyalka and Ors v. The State of Jharkhand and Ors.*, reported in 2014 (3) J.L.J.R.661 and iv) *Narasimha Uppal & Anr. v. The State Karnataka (Through its Sub Inspector of Police) & Others*, Passed in Criminal Petition No.200629/2017 C/W Criminal Revision Petition No. 200071/2018, Order dated 21st February, 2022.

11. I have considered the rival submissions, perused the impugned Orders and gone through the reported cases cited by the

learned counsel appearing for the parties. It is trite that each case shall be decided on the basis of its own facts and circumstances.

12. On perusal of the record it revealed that, since 2001, the complainant used to purchase the insurance from A-1. In the year 2019, the policy No.13100046160700000359 was renewed as policy No.13100046180700000032 *w.e.f.* 14.01.2019. The sum insured under Section-I was Rs.7.05 crores and under Section-II was Rs.2.50 crores. The policy documents and the relevant emails show that Anil Maji was goldsmith/*Karigar* of the complainant and shown in the proposal form and the policy document of 2019, in the list of “sub-contractor/goldsmith/employees/sundry-debtors”. There was correction in the policy as the names of all the nine employees were prefixed with the title “Mrs” which mistake was latter on removed with the intervention of the A-3, Kirti Patel.

13. On 5th and 22nd February 2019, the complainant had requested the A-1 and A-3 to add the risk cover of Rs.2.5 crores and Rs.5 crores towards “Logistic & Angadia” and “Fidelity” respectively. On 25.02.2019, a Yes Bank cheque with limit of Rs.1,25,000/- was sent to the MRO-IV office of A-1 for enhancing the insurance cover as aforesaid. However, it is not the case of the accused that said cheque was not encashed.

14. Between 18.04.2019 to 4.05.2019 the complainant handed over the gold worth Rs.7 crores to Anil Maji for the purpose of making fine jewelry/ornaments. As alleged, Anil Maji and his associates misappropriated that gold and caused wrongful loss to the complainant. Therefore, the complainant filed a complaint

with the Crime Branch and EOW on 13.05.2019 and with L.T Marg Police station on 14.05.2019. Consequently, an FIR bearing C.R. No.171/2019 was registered on 28.05.2019 under Sections 409 and 120B I.P.C. However, the police could not recover the gold. Meanwhile, on 11.05.2019, the complainant informed the A-3, Mr Kirti Patel about misappropriation of the gold. The complainant then filed the insurance claim *vide* email dated 24.06.2019. He also supplied the necessary documents and information to facilitate the survey for assessment of the loss.

15. Record indicates that, after lodging of the insurance claim, the A-1 has not appointed the surveyor with promptitude. The insurance risk cover was reduced by Rs.3 crore altering its original Sections I & II but without complainant's consent and informing him that change in the advance. The accused side did not show any justifiable reason for reducing the risk cover. This was completely in contrast to the complainant's request to add the extra risk in the insurance policy which request was made much before the gold was misappropriated. It is only when the complainant followed up with the office of A-1, certain other accused and complained to the IRDA, "Nil Endorsement Policy Document" was issued on 31.01.2020. However, the accused side has not explained that if this policy document was issued on 31.01.2020, then why, in this policy document the period of insurance was shown from 14.01.2019 to 13.01.2020 and why it was to be effective from the backdate, i.e., 12.01.2020.

16. At no point of time, the accused side objected the complaint for declaring Anil Maji as his goldsmith/ *Karigar* nor it is explained

as to why Anil Maji's name was maintained on the record for the purpose of the risk cover. The Survey Report filed by A-8 concluded that the complainant has suffered the gross loss of the gold worth Rs.7.61 crores. However, the A-8 recommended to reject his claim giving reasons that, Anil Maji's name is not appearing in the employees' list attached with the policy; that, there exist no relationship as "Employer-Employee" between the two; and that, negligent business approach of the complainant while dealing with Anil Maji. Nevertheless, it is an admitted fact that the terms and conditions of the insurance policy in question were never provided to the complainant alongwith the original policy document. That apart, as stated in the police report, after repudiating the claim, the accused representing the office of A-1 took the stance that the repudiation was at the instance of their high authority.

17. The complainant has specifically alleged that the accused persons in furtherance of their common intention fabricated the insurance policy and related documents for the purpose of denying his rightful insurance claim. The original policy document appears to have been digitally signed by Mr. Srinivasan Vaideswaran. However, it is not the case of the accused side that the alleged false policy document thereby reducing the risk cover was also digitally signed by Mr. Srinivasan Vaideswaran himself. Both the policy documents are falling within the definition of "valuable security" stated in I.P.C. Because said documents are sufficient to create, restrict and extinguish necessary legal right in relation to the contract of the insurance in question. In the complaint it is clearly

stated that the alleged offence was committed pursuance of the criminal conspiracy of the accused persons.

18. However, it is material to note that the verification statement of the complainant was not recorded by the learned Magistrate but said statement was provided to the Court by the learned Advocate for the complainant and the same statement the learned Magistrate took on record. This fact is distinctly recorded in the *Roznama* of the complaint which is not disputed by the complainant. Therefore, it is apparent that the verification statement was not recorded in accordance with the provisions of Section 200 of Cr.P.C.

19. In case of *Amarnath Baijnath Gupta & Anr.* (supra), this Court considered the decision in *Nirmaljit Singh Hoon v. State of W.B.*, reported in (1973) 3 SCC 753. Therein, in paragraph 22 it is observed and held that, “The object of such examination is to ascertain whether there is a prima facie case against the person accused of the offence in the complaint, and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person. Such examination is provided therefore to find out whether there is or not sufficient ground for proceeding.” Reference was also made to the decision in *Captain Lance Irwin Lobo v. Ismail D'Souza @ Angelo Ismail de Souza and another*, reported in 2007 All. M. R. (Cri.) 623. Therein in paragraph 16 it is observed and held that :

“16. ... The recording of the statement on oath of the complainant under Section 200 Cr.P.C. is not an empty formality. Commonly it is nicknamed as

verification. To verify means to establish the truth. In other words, verification is done in order to ascertain as to what is pleaded by the complainant is true or not. It is with a view to separate chaff from the grain as many a times complaints do contain unfounded allegations and it is the duty of the Court to ensure that what is stated in the complaint is also stated by the complainant on oath and it is only then that based on such statement that process can be issued. The corollary of this would be that unless offences are disclosed from the statement on oath, no process can be issued only based on averments in the complaint. The complainant is bound to make a statement on oath as to how the offence was committed and how the accused persons are responsible therefore. After the statement on oath is recorded, a Magistrate is required to apply his judicial mind to the facts of the case and the law applicable thereto and find out what offence/s is made out, notwithstanding that the other party at that stage is unrepresented. As observed by the Apex Court time and again, summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. A Magistrate is required to examine the nature of the allegations made in the complaint and the evidence both oral and documentary to see if it is sufficient for the complainant to succeed in bringing charge home to the accused. In other words, the examination of the complainant on oath is for the purpose of ascertaining whether a prima facie case is made out against the accused to issue process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass.

In view of the aforesaid observations, in case of *Amarnath Baijnath Gupta & Anr.* (supra) in paragraph 24 this Court has held that, “On plain reading of Section 200 of the said Code it appears

that it is the obligation of the Magistrate to examine the complainant which means that the learned Magistrate is obliged to put questions to the complainant for eliciting the truth from him. The said provision enjoins a judicial duty to be performed by the Judicial Magistrate which requires an application of judicial mind. ... Generally, the complaints are drafted by the lawyers as per the instructions of the complainants. Thus, a complaint is the translated version or a formulated version made by the advocate on the instructions received from the complainant. Therefore, the examination of the complainant under section 200 by the learned Magistrate is very important. During the course of such examination the complainant tells the truth. In fact, the object of the learned Magistrate recording such statement is of eliciting the truth from the complainant. Therefore, while recording a statement under section 200 of the said Code in such a complaint, the learned Magistrate cannot merely reproduce the data in a pre-conceived format. He must give an opportunity to the complainant to state and describe the role played by the accused especially when directors/officers of a company are sought to be held vicariously liable. The object of examination is that a true version on oath of the complainant is brought on record.” In paragraph 26 it is observed that, “... The learned Magistrate has to perform his duty under section 200 of the said Code by putting questions to the complainant so that the complainant can state before the Court as to how the accused named in the complaint are liable.”

20. The examination of the complainant and his witness under Section 200 of Cr.P.C. is not a mere formality but said examination is to be done intelligently and in such a manner as to

enable the Magistrate to determine whether there is a prima facie sufficient ground for proceeding. Thus, in such a determination Section 200 of Cr.P.C. plays a very crucial role.

21. Now turning to the case in hand. In the instant case, the careful reading of the verification statement of the complainant clearly show that it was prepared/drafted by the learned Advocate for the complainant. However, neither in the *Roznama* of the complaint case nor in the complaint or on the verification statement the learned Magistrate has endorsed that he questioned the complainant as required under Section 200 of Cr.P.C. and confirmed that verification statement from his answers. On the contrary, on the said verification statement the learned Magistrate merely endorsed as “Before me” and signed below it. Thus, it is evident that the learned Magistrate has not performed his duty as ruled by Section 200 of Cr.P.C. but mechanically. Therefore, the verification is not acceptable in law because it cannot be taken aid of to ascertain the truth or otherwise about the allegations made in the subject complaint.

22. Now coming to the impugned Order of issue process. Bare perusal of said Order show that not a single reason is recorded by the learned Magistrate as to how the alleged offence punishable under Sections 406, 420, 465, 468, 471 and 120B of I.P.C. has been made out and against which accused. In this regard reference is required to be made to the cited decision in Lalankumar Singh and Others (Supra), therein in paragraph 28 the Hon’ble Supreme Court has observed and held that, “The order of issuance of 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. ...”.

In this context, a reference was made to the decision in *Sunil Bharti Mittal v. CBI*, reported in (2015) 4 SCC 609. Therein in paragraph 53 it is held that, “ ... the words “sufficient grounds for proceeding” appearing in the Section 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 prima facie case against 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.”

(emphasis supplied)

In case of *State of Orissa vs. Dhaniram Luhar*, reported in 2004 (5) SCC 568, in paragraph 8, the Apex Court has observed that :

“Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed “The giving of

reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 ICR 120)(NIRC) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

As held in *Pepsi Foods Ltd. v. Judicial Magistrate*, reported in 1998 (5) SCC 749, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. 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. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. In the case in hand, this enunciation has been

overlooked by the learned Magistrate while passing the impugned Order of issue process against the accused persons.

In view of above discussion, the impugned Order of issue process is liable to be set aside. The learned Additional Sessions Judges who have decided the said Criminal Revisions Applications also failed to consider that the learned Magistrate has not fulfilled his statutory obligations while recording the verification statement and the Order of issue process. As a corollary, the impugned Orders dated 11.08.2022 and 05.04.2023 in Criminal Revision Application No.488 of 2022 and No.639 of 2022 respectively are liable to be quashed and set aside. Nevertheless, while exercising the power under Article 227 of the Constitution of India and under section 482 of the said Code, this Court will have to ensure that the complainant should not suffer due to that error on the part of learned Magistrate and the learned Judges.

23. In the case of *Mona Panwar v. High Court of Judicature of Allahabad* reported in (2011) 3 SCC 496, the Hon'ble Supreme Court held that, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint or on a police report or upon information of a person other than a police officer. Before the Magistrate can be said to have taken cognizance of an offence under Section 190(1) (b) of the Code, he must have not only applied his mind to the contents

of the complaint presented before him, but must have done so for the purpose of proceeding under Section 200 and the provisions following that Section. Taking cognizance is a different thing from initiation of the proceedings.

(emphasis supplied)

In *Vinubhai Haribhai Malaviya v. The State of Gujarat*, reported in (2019) 17 SCC 1, the Hon'ble Supreme Court has referred *Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel* reported in (2017) 4 SCC 177 wherein in para 51 it was observed that, the direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not.

24. In the instant case in hand, the complaint was filed on 02.12.2020. When the complaint came before the learned Magistrate on 05.12.2020, he had ordered to put up the complaint for consideration. The *Roznama* dated 22.03.2021 recorded that the complaint was adjourned to date 06.04.2021 for recording verification statement. Thus, the learned Magistrate had already applied his mind to the contents of the complaint and thus, taken it cognizance, therefore, he had adjourned the complaint for verification statement. Considering the aforesaid reported cases, the stage of recording the verification statement and the stage for passing direction for the investigation under Section 202 of Cr.P.C. occurring post taking cognizance. The purpose of both the

action is the same. However, herein, there is no irregularity in respect of the order for investigation under Section 202 of Cr.P.C. It is not the case of the complainant that said investigation done by the police is faulty. Nor the accused party pointed anything erroneous about that investigation.

Therefore, although, the impugned Order of issue process will have to be set aside, the complaint will have to be remanded and relegated to the stage of recording statement under Section 200 of Cr.P.C with a direction to the learned Magistrate to record the statement under Section 200 of Cr.P.C afresh in accordance with law and to pass an appropriate Order on the complaint, in the facts and in view of the applicable law, I am of the view that there is no need to again direct for the investigation under Section 202 of Cr.P.C. which appears to have been properly done. This will help to avoid the situation of taking advantage. Additionally, it will prevent the police from pressing the same investigation with the parties again.

25. In view of above discussion, Writ Petition No.3626/2022, No.6246/2024 and No.525/2023 succeed partly. Hence, following Order is passed:

- i) The impugned Order of issue process dated 07.04.2022, passed by the 28th Court of Metropolitan Magistrate, at Esplanade, Mumbai in complaint case No.2800098/SW/2020, is quashed and set aside.
- ii) Consequently, the impugned Order dated 11.08.2022 in Criminal Revision Application No.488/2022 and the impugned Order dated 05.04.2023 in Criminal

Revision Application No.639/2022 passed by the learned Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai are quashed and set aside.

- iii) The learned Metropolitan Magistrate, 28th Court, at Esplanade, Mumbai will record the statement of the complainant under Section 200 of the Code of Criminal Procedure, 1973 afresh in accordance with law in the light of the observations made in this judgment. After recording of the verification statement, the learned Magistrate will pass appropriate order on the complaint in accordance with law.
- iv) There is no need to direct for an investigation under Section 202 of Cr.P.C.
- v) All Petitions are partly allowed in aforesaid terms.
- vi) It is made clear that the observation of this Court in this Order are prima facie in nature.
- vii) All questions on merits are kept open to be decided by the trial Court.

(SHYAM C. CHANDAK, J.)