



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4169 OF 2021

1. Mrs. V. Motwani
2. Deepak Bhatija
3. Rajesh Bhatija
4. Prakash Shivnani
5. Shanti Chopra ...Petitioners

V/s.

1. Sudhir Diwan
2. The State of Maharashtra ...Respondents.

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Mr. Niranjan Mundargi a/w. Adv. Minal Chandnani, Ms Keral Mehta and Mr. Rajesh Ranglani for the Petitioners.

Mr. Sudhir Diwan, Respondent No.1 in person is present.

Ms Rutuja Ambekar, APP for the Respondent/State.

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CORAM : N.R. BORKAR, J.
DATE : 08.05.2026.

P.C. :

1. This petition takes exception to the order dated 3rd April 2021 passed by the Metropolitan Magistrate, 23rd Court at Esplanade, Mumbai in C.C. No.101/SW/2019.

2. By the order impugned, the learned Magistrate has issued process against the present petitioners under Sections 200, 202 and 288 read with 34 of the Indian Penal Code, in a complaint case filed by respondent No.1 against them.

3. The petitioners and respondent No.1 are members of Augustus Daisy Cooperative Housing Society Limited. It is alleged



that the petitioners as members of Managing Committee permitted several members to carry out illegal and dangerous structural alteration in violation of BMC Development Control Rules and Society Bye Laws, within and outside their flats.

4. I have heard the learned counsel for the petitioners and the respondent No.1 in person.

5. Learned counsel for the petitioners submits that the learned Magistrate while issuing process for the offences punishable under Section 200 of the IPC has not considered the bar contained under Section 195 of the Cr.P.C. It is submitted that in respect of alleged structural alteration complaint was made to the Brihanmumbai Municipal Corporation (BMC), pursuant to which a notice was issued to the society. It is submitted that pursuant to the said notice the alleged structural alterations were removed. It is submitted that there is a in-built mechanism provided under the Mumbai Municipal Corporation Act for such act and therefore, complaint was not maintainable.

6. On the other hand, the respondent No.1 submits that learned Magistrate after considering the allegations and the documents on record, rightly issued the process against the present petitioners. It is submitted that considering the overall facts and circumstances the petition may not be entertained.



7. I have perused the impugned order. In addition to Sections 202 and 288 of the IPC, the learned Magistrate has issued process against the petitioners for the offence punishable under Section 200 read with 34 of the IPC. However, while issuing the process for the offence punishable under Section 200 of the IPC, the learned Magistrate has not considered the bar contained under Section 195 of the Cr.P.C. It further appears that the learned Magistrate has issued the process mechanically. In that view of the matter, the following order is passed

ORDER

A] The order impugned dated 3rd April 2021 passed by the Metropolitan Magistrate, 23rd Court at Esplanade, Mumbai in C.C. No.101/SW/2019 is quashed and set aside.

B] The learned Metropolitan Magistrate shall consider the matter afresh.

8. The Petition is disposed of in the aforesaid terms.

[N.R.BORKAR, J.]