Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1045 OF 2010
WITH
INTERIM APPLICATION NO. 2244 OF 2026

Jaffer Suleman Musafirkhana Trust & Ors. .. Petitioners

Versus

The State of Maharashtra & Anr. .. Respondents

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- Mr. Manish Rai, Advocate for Petitioner Nos. 1 & 4
- Mr. Manoj Mohite, Senior Advocate a/w Mr. Narayan Sahu, Ms. Priyanka Chavan and Mr. Shrinivasan Mudaliar i/by M/s. Federal & Company, Advocates for Petitioner No. 3
- Ms. Asha Gachke, Respondent No. 2 (party in person)
- Ms. Rajeshree V. Newton, APP for Respondent - State

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CORAM : MILIND N. JADHAV, J.

DATE : SEPTEMBER 17, 2026.

P.C.:

1. Heard Mr. Rai, learned Advocate for Petitioner Nos. 1 and 4; Mr. Mohite, learned Senior Advocate for Petitioner No.3; Ms. Gachke - Respondent No 2 (party in person) and Ms. Newton, learned APP for Respondent - State.

2. Petitioners are challenging order dated 16.11.2009 in CC No.197/SW/2009 passed by Metropolitan Magistrate, 11th Court , Kurla, Mumbai issuing process against the Petitioners under Sections 380, 418, 420, 451, 504, 506, 506(II) 34 and 120(b) of the Indian Penal Code, 1860 (for short "**IPC**"). Copy of impugned order is appended at page No.54 of the Petition.

3. Briefly stated, CC No.197/SW/2009 was filed by Respondent No.2 alleging commission of offences against Petitioners. Respondent No.2's case is that Room No.1 on ground floor located in Khare Sadan Building, Kurla was sublet to her by one Vishnu Joglekar in the year 1982 and was in her possession since then. On 15.11.2004 the Petitioner No.1 - Trust acquired Khare Sadan Building wherein according to attornment Vishnu Joglekar was recorded as tenant in the list of tenants. Thus, it is Petitioners' case that Vishnu Joglekar could not have transferred or sublet Room No.1 to Respondent No.2. According to the record, Room No.1 belong to Mr. Menon and not Vishnu Joglekar. The Khare family were erstwhile landlord of building who transferred the building by registered Sale Deed to Trust in the year 2004.

4. According to Respondent No.2 and as argued vehemently by her on basis of her written submissions which she has persuaded me to consider. On 28.02.2007 some unidentified persons broke open the lock on Room No.1, one of whom was Accused No.9 i.e. the Court Bailiff for executing an order of decree of possession passed in favour of Petitioner No.1 - Trust. Petitioner Nos.2 to 6 are Trustees of the Trust. They are also arraigned as Accused persons. Petitioner No.2 died on 19.01.2012. Petitioner No.3 resigned on 30.12.2020. Petitioner No.4 is the present Trustee. Petitioner No.5 died on 17.11.2020. Petitioner No.6 resigned on 23.02.2009. Petitioner No.7 is the original landowner of Khare Sadan Building. The Court Bailiff is arraigned as Accused No.9.

5. Case of Respondent No.2 is that when Room No.1 was broke open the inventory made by Court Bailiff omitted mentioning one gas cylinder and cash of Rs.32,000/- lying in the room. Hence, she approached the Magistrate's Court for issuance of process which was granted vide order dated 16.11.2009, this is the subject matter of challenge in the Petition.

6. Mr. Mohite, learned Senior Advocate has taken me through the facts of the case which can be briefly looked into for considering the challenge of order dated 16.11.2009.

7. It is seen that on 15.01.2004, the Trust acquired Khare Sadan Building vide registered Sale Deed. According to Petitioners, original tenants of the building on ground floor were Tara Joglekar, Mr. Menon and Mrs. Tilekar out of whom Mr. Menon was occupant of Room No.1 and Mrs. Tilekar was occupant of Room No.2 and Vishnu Joglekar was tenant of Room No.3. The Khare family were the signatories to the registered Sale Deed and aforesaid tenants were attorned to the Trust hence according to Petitioners there was no trace of Respondent No.2 or her presence.

8. It is seen that Mr. Menon and Mrs. Tilekar vacated their premises / rooms and handed over possession to Petitioners whereas

Tara Joglekar who was occupant of Room No.3 did not vacate her premises. The Petitioners filed RAE Suit bearing No.47/78 of 2005 *qua* Room No.3 at the same time Respondent No.2 approached the Small Causes Court seeking restoration of possession by filing Notice of Motion No. 92 of 2007. Whereabouts of Tara Joglekar was not known and after following due process of law, eviction decree was passed by Small Causes Court which was executed by the Bailiff of the Court. According to Petitioners, all this was done by following due process of law. Judgment of Small Causes Court is dated 24.04.2006

9. After that execution took place, Respondent No.2 therefore filed application for issuance of process after filing a complaint against Petitioners and two other accused persons namely landlord and Court Bailiff in which the impugned order came to be passed by the learned Magistrate on 16.11.2009.

10. Before I proceed to adjudicate the matter on merits Mr. Mohite, learned Senior Advocate in his usual fair mindedness informs the Court that obstructionist proceedings in execution against Respondent No.2 rather filed by Respondent No.2 are pending before the Small Causes Court and they are at the stage of evidence. He would submit that the outcome of the said proceedings will determine the substantive right of Respondent No.2 in the subject room. He would therefore submit that the order issuing process dated 16.11.2009 for the alleged offences which has been stayed by this

Court should be therefore set aside and quashed since the *lis* between the parties is purely civil in nature and will be determined by the Small Causes Court. He would passionately submit that no criminality can be attributed to Petitioners since Petitioners being decree holder were executing the decree of the Small Causes Court by following due process of law and the allegations of Respondent No.2 for seeking issuance of process and criminality attributed to Petitioners cannot be sustained in the facts and circumstances of the present case.

11. Respondent No.2 has vehemently opposed the challenge to the order issuing process dated 16.11.2009. She would draw my attention to Affidavit-in-Reply / Written submissions dated 16.06.2026 placed on record. Copy of which is appended at page no.171 to 199 of the Petition and would submit that he would submit that the present Petition is nothing but an attempt to invoke the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. with the object of delaying and obstructing the criminal proceedings pending before the Trial Court, and that Petitioners have approached this Court without first availing the efficacious statutory remedies available to them under the Code. She would submit that Petitioners instead of appearing before the Trial Court pursuant to the process issued against them, recording their attendance and plea and complying with the consequential formalities has chosen to directly invoke the extraordinary/inherent jurisdiction of this Court and thereby seeks to circumvent the procedure prescribed by law. She would submit that such an invocation of inherent jurisdiction cannot be permitted to become a substitute for the remedies available to an accused before the Trial Court, particularly when the criminal proceedings have already been set in motion in accordance with law. She would submit that the conduct of Petitioners clearly demonstrates that the present Petition has been filed as a device to scuttle the investigation/prosecution and to secure an interim protection without subjecting themselves to trial. She would submit that the issuance of process by the Trial Court is not an interlocutory order and that Petitioners ought not to be permitted to misuse the inherent powers of this Court to bypass the statutory proceedings and obtain orders without first submitting themselves to the process of the Trial Court.

11.1. She would submit that the contention of Petitioners that the criminal proceedings ought to be terminated merely on account of the nature or outcome of the connected civil proceedings is wholly misconceived and cannot by itself furnish a ground for quashing the criminal prosecution. She would submit that civil and criminal proceedings may proceed simultaneously where the allegations disclose the commission of a criminal offence and that the continuation of criminal proceedings would depend upon the facts and circumstances and the material available on record. She would submit that the principle that criminal liability may cease upon the death of the accused upon a final acquittal or where proceedings are otherwise found to be wholly abusive or devoid of the necessary ingredients of an offence cannot be mechanically invoked in the present case. She would submit that unless Petitioners demonstrates that the allegations even if taken at their face value, do not constitute any offence or that the continuation of the proceedings amounts to manifest abuse of the process of law.

11.2. In support of her arguments she has referred to and relied upon the decision of the Supreme Court and Madras High Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation[1]; Krishnakumari Vs. The State of Tamilnadu and Others.[2]; Sugesan Transport Pvt. Ltd vs The Assistant Commissioner Of Police[3]; and Lala Jairam Das Vs. King Emperor[4].***

11.3. Respondent No.2 after taking me through Affidavit-in-Reply has further placed before me key points of arguments dated 28.08.2026. Copy of which is appended to the Petition. She would submit that the present Petition, insofar as Petitioner Nos. 1, 2 and 4 to 7 are concerned, deserves to be dismissed as they have remained completely silent throughout the proceedings from restoration till the stage of final hearing and have neither advanced oral submissions nor filed any written submissions or interim arguments in support of their

1 (2022) 10 SCC 51
2 Crl.O.P.(MD).No.20545 of 2025, decided on 02.01.2026 by the Madurai Bench of Madras High Court
3 2016 SCC OnLine Mad 934
4 1945 AIR(PC) 94

case. She would submit that their continued inaction demonstrates that they are no longer interested in prosecuting the reliefs sought by them, and therefore the Petition deserves to be dismissed *qua* the said Petitioners with appropriate compensatory costs particularly as the Respondent has been unnecessarily dragged into the litigation for the last several years. She would submit that insofar as Petitioner No.3 is concerned, the present proceedings constitute an impermissible attempt to challenge the summons/process and the non-bailable warrant by inviting this Court to undertake a roving enquiry into disputed questions of fact and thereby conduct a mini-trial in proceedings under Section 482 of the Cr.P.C. /Section 528 of the BNSS. She would submit that the Petitioner No.3 has failed to avail himself of the statutory remedies before the Trial Court and instead of appearing before the Trial Court pursuant to the process issued against him, recording his attendance and plea and seeking appropriate relief in accordance with law, has directly approached this Court seeking to invoke its extraordinary jurisdiction.

11.4. She would submit that the Trial Court itself possesses the requisite statutory jurisdiction to consider an application for recall or cancellation of the non-bailable warrant upon Petitioner No.3 showing sufficient cause for his previous absence and therefore the Petitioner No.3 ought to be relegated to the jurisdiction of the Trial Court rather than being permitted to circumvent the statutory procedure. She would submit that the allegations raised by the Petitioner No.3 regarding the documents relied upon by the Trial Court, including the allegation that the record contains false documents or that Room No.1 and Room No.3 are the same premises, are disputed questions of fact which cannot appropriately be adjudicated in the present quashing proceedings. She would submit that the Petitioner No.3 attempt to dispute the factual findings and circumstances surrounding his absence before the Trial Court, rather than submitting himself to the jurisdiction of the said Court and pursuing the remedies available to him in law, amounts to an abuse of the process of law. She would submit that in the aforesaid circumstances, no case is made out for exercise of the inherent jurisdiction of this Court and the present Petition therefore deserves to be dismissed, with costs.

12. I have heard Mr. Rai, learned Advocate for Petitioner Nos. 1 and 4; Mr. Mohite, learned Senior Advocate for Petitioner No.3; Ms. Gachke - Respondent No 2 (party in person) and Ms. Newton, learned APP for Respondent - State. I have also considered the Affidavit-in-Reply and key points of argument made by Respondent No.2 in person as requested by her.

13. At the outset it is seen that the facts placed before the Court is clearly a civil dispute with respect to entitlement of Respondent No.2 to the subject Room in question, as to whether on the ground of her case as a sublette she would qualify as a tenant of the premises. The order dated 16.11.2009 of issuing process is proceeded by Petitioners by adopting and following the due process of law. As a consequence of the decree passed in RAE Suit No.47/78 of 2005. Copy of which is appended at Exhibit “G” and Respondent No.2 also having participated therein, wherein she herself has expressed the dichotomy of the subject Room being Room No.1 but called by the Plaintiffs (Petitioners) as Room No.3, in such an imbroglio it is a clear matter of evidence.

14. The order / decree of Small Causes Court is appended below Exhibit “K” at page No. 98 of the Petition. Execution of that decree is done by the Court Bailiff. It is seen that Bailiff Report is on record and nothing precluded Respondent No.2 to approach the Small Causes Court for declaratory relief despite she very well knowing about the subsistence of the aforesaid RAE Suit No. 47/78 of 2005. Knowledge of Respondent No.2 is clearly gathered from her own Application made to the Small Causes Court in the year 2007. Copy of which is appended below Exhibit “H” at page No.84. Thus, it is seen that instead of filing an appropriate civil proceedings on the ground that Respondent No.2 was an occupant for 25 years as claimed by her, she infact chose to file a criminal complaint.

15. I have duly considered her Affidavit-in-Reply dated 10.06.2010, her Additional Affidavit-in-Reply dated 16.06.2026 and her key points of arguments dated 28.08.2026. In view of the aforesaid observations and findings, it is seen that the order dated 16.11.2009 is passed by Magistrate with complete non-application of mind. The order issuing process is primarily passed on the basis of the alleged act of Accused No.9 namely Court Bailiff only. In that view, implication of Petitioner – Trust and Trustees is completely unwarranted. In such circumstances no incriminating material is either brought on record or is attributable to the Petitioners before me.

16. At the outset it is seen that the steps taken by the Court Bailiff and documentation is all placed on record appended to the Petition. I have perused the same. There is nothing incoherent or wrong with the said documentation. All Bailiff forms are duly filed in and the inventory is also complete. What is crucial is that the Bailiff performed his duty as a "public servant" by following the due process of law which is completely overlooked by the Magistrate while granting order issuing process, especially, so when it emanates from a civil action of execution of a decree. What is significant, is that there is no attempt made by the Magistrate to verify and ascertain the veracity of Respondent No.2's case especially when the record shows that she was fully aware of the eviction proceedings filed by the Petitioners against the incumbent tenant of the subject room whose tenancy was attorned to the Petitioner No.1 – Trust and in 2007 itself she had filed a Notice of Motion to intervene in the Eviction Suit filed by the

Petitioner No.1 - Trust. Even according to Respondent No.2' case it is averred by her that there was an oral understanding between the erstwhile tenant of the room and herself but that is completely belied by the attornment of tenancy by the erstwhile landlord and the rent receipt annexed to the said Sale Deed which never reflected the name of Respondent No.2. Nothing precluded the Respondent No.2 from seeking declaratory relief from the appropriate Court *qua* her substantive right and entitlement.

17. It is clearly seen from the record that Respondent No.2 filed a Notice of Motion in the Small Cause Court in 2007 alleging that she was residing in Room No.1 which was wrongly referred to as Room No.3 by Plaintiffs in the eviction suit. If it is Respondent No.2's case that there was an oral understanding with Vishnu Joglekar then nothing prevented her from seeking declaration of her entitlement as a sub-lettee with regard to the subject room. Thus the fact that she did not take any steps itself shows that Respondent No.2 had no right whatsoever in the subject premises. The *lis* therefore is purely civil in nature.

18. It is necessary to consider that Respondent No.2 is an Advocate by profession and therefore ought to have been more cautious about her right and entitlement *qua* the subject room rather than filing a criminal complaint against a Court officer and roping in the Petitioner No.1 and its Trustees as accused persons in the complaint in such above facts on the ground that some cash amount of Rs.32,000 was lying in the room and it does not find mention in the inventory. This is nothing but in my opinion a clear abuse of the due process of law in invoking criminal action and pressuring the opponent when the dispute is entirely civil and parties were already before the Small Causes Court in appropriate proceedings.

19. It is seen that the Bailiff's Report *prima facie* shows the signatures of all those who were present at the time of taking inventory, *prima faci*e reading the Bailiff's Report does not arouse any suspicion whatsoever as contemplated by Respondent No.2. Therefore her submission that one gas cylinder and Rs.32,000/- cash lying in the room does not find mention in the inventory should be the reason for granting order issuing process cannot be accepted on the face of record. The Magistrate has not given due importance to the entire material on record before passing the order dated 16.11.2009.

20. In view of my aforesaid observations and findings the order dated 16.11.2009 is not sustainable in law and is quashed and set aside. Resultantly, the Petition No.1045 of 2010 is allowed in terms of prayer clause "a".

21. Since, I am informed that the obstructionist proceedings are at the stage of evidence before Small Causes Court, the same shall be proceeded with and determined in accordance with law on the basis of evidence as well as evidence in rebuttal led by parties therein without being influenced by the opinion expressed by this Court in the present judgment and strictly in accordance with law.

22. In view of this order, Interim Application No.2244 of 2026, if so pending on record and file of this Petition, is accordingly disposed.

23. Criminal Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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