IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2627 OF 2024

Dadalal Shankar Patil
Age: 59 years, Occ: Service,
R/o Waladgaon, Tq Shrirampur,
Dist. Ahmednagar ..Petitioner
(Org Respondent)

Versus

1. The State of Maharashtra
   Through Police Station Officer,
   Railway Police Station, Manmad
   Dist. Nashik.
   (Copy to be served on the Public Prosecutor,
   High Court of Judicature, Bombay.

2. Kapil Bhausaheb Pawar,
   Age: 38 years, Occ: Service.

3. Vaibhav Sambhaji Rohom
   Age: 30 years, Occ: Agri.

4. Swapnil Arun Waghmare
   Age: 30 years, Occ: Service,
   Res No. 2 to 4 are R/o.
   Kopargaon, Tq Kopargaon,
   Dist. Ahmednagar.

5. Trilok Prabhakar Pawar,
   Age: 31 years, Occ: Agri.,
   R/o Hingani, Tq. Kopargaon,
   Dist. Ahmednagar.

…Respondents
(Resp Nos. 2 to 5 Org Applicants/Accused)

WITH

WRIT PETITION NO. 2628 OF 2024

Dadalal Shankar Patil
Age: 59 years, Occ: Service,
R/o Waladgaon, Tq Shrirampur,
Dist. Ahmednagar ..Petitioner
(Org Respondent)

Versus

1. The State of Maharashtra
Through Police Station Officer,
Railway Police Station, Manmad
Dist. Nashik.
(Copy to be served on the Public Prosecutor,
High Court of Judicature, Bombay.

2. Rajendra Amrut Kapgate
Age: 55 years, Occ: Service.

3. Pankaj Nagin Patil
Age: 40 years, Occ: Service.

Res. Nos. 2 and 3 are R/o K.B.P.
Sanjeevani College, Kopargaon,
Tq Kopargaon, Dist. Ahmednagar. …Respondents
(Resp Nos. 2 & 3 Org Applicants/Accused)

Mr. Nitin Gaware Patil, with Divyesh K Jain, for the Petitioners in both Petitions.
Mr. D.J. Haldankar, APP, for Respondent No.1-State in both Petitions.
Mr. Tushar Sonawane, for Respondent Nos. 2 to 5 in WP/2627/2024 and Respondent Nos. 2 and 3 in WP/2628/2024.

CORAM: N. J. JAMADAR, J.
RESERVED ON : 5th MARCH 2026
PRONOUNCED ON : 24th MARCH 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. These Petitions under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 ("the Code") call in question the legality, propriety and correctness of the impugned orders dated 6th January 2024 passed by the learned Additional Sessions Judge, Malegaon in Criminal Revision Application No. 90 of 2023 and Criminal Revision Application No. 95 of 2023, whereby the Revision Application No. 90 of 2023, preferred by Respondent Nos. 1 to 4 —Accused, came to be allowed, and the Revision Application No. 95 of 2023, preferred by the Petitioner, against the order dated 3rd March 2021, passed by the learned Magistrate, Manmad, thereby dismissing the complaint preferred by the Petitioner against Respondent Nos. 2 and 3—Accused Nos. 5 and 6 in Writ Petition No. 2628 of 2024, came to be dismissed.

3. Shorn of unnecessary details, the background facts leading to this Petition can be stated as under:

3.1 The Petitioner had a son, Pratik. He was enrolled in KBP Polytechnic College at Kopargaon. Respondent Nos. 2 to 4 in Writ Petition No. 2627 of 2024—Accused Nos. 1 to 3, were classmates of Pratik in the second year of the course. Respondent No. 5—Accused No. 4 was their teacher. Respondent Nos. 2 and 3 in Writ Petition No. 2628

of 2024— Accused Nos. 5 and 6, were the then Principal and supervisor of the hostel wherein Pratik was staying, respectively.

3.2 The Petitioner alleged, Respondent No.5—Accused No.4 had entrusted task of collecting fees from the students to Pratik. Disputes arose over the collection of the fees from the tuition-mates of Pratik and the payment thereof to Accused No.4. It is the allegation of the Petitioner that few days prior to the occurrence, the Accused – tuitionmates of Pratik had assaulted Pratik over the said matter and the incident was related to him by Pratik.

3.3 On the night intervening 26th and 27th September 2010, a body of an unknown person was found on the railway tracks. On the next day, the dead body was identified to be that of Pratik. Highlighting various suspicious circumstances, the Petitioner lodged a private complaint before the learned Magistrate alleging *inter alia* that the Accused had killed the deceased and a pretence of railway accident was made.

3.4 By an order dated 7th June 2011, the learned Magistrate directed registration of the FIR and investigation under Section 156(3) of the Code. Railway police, Manmad filed a C-Summary report.

3.5 The Petitioner preferred a protest Petition. By an order dated 30th July 2012, the learned Magistrate decided to conduct an enquiry under Section 202 of the Code and directed the Petitioner-complainant to examine himself and also all his witnesses on oath. After examining

almost 15 witnesses, the learned Magistrate by an order dated 10th December 2015, rejected the prayer of the complainant to issue process under Section 204 of the Code and instead again directed PSO, Railway Police Station, Manmad, to register the offence and re-investigate the case and submit a report under Section 156 (3) of Code.

3.6 Being aggrieved, the Respondents-Accused preferred Revision Application before the Sessions Judge, Ahmednagar. By an order dated 29th March 2017, the said Revision Application was dismissed with a direction to Respondents-Revision Applicants to file Revision before the Sessions Judge, Nashik.

3.7 Being further aggrieved, the Respondents— Accused preferred Criminal Writ Petition No. 620 of 2017. By a judgment and order dated 5th March 2019, the High Court, Bench at Aurangabad, allowed the Petition, set aside the order of the learned Magistrate dated 10th December 2015 directing the re-investigation under Section 156(3) of the Code and remanded the complaint back to the learned Magistrate to follow the procedure as enshrined in the Code, after taking cognizance of the matter under Section 202 of the Code. This Court *inter alia* recorded that since the offence punishable under Section 302, allegedly committed by the accused, was exclusively triable by the Court of Session, in view of the provisions contained in Section 202(1)(a) of the Code, the Magistrate could not have directed re-investigation and ought

to have proceeded in accordance with the provisions contained in Chapter XV of the Code.

3.8 Post remand, by an order dated 3rd March 2021, the learned Magistrate was persuaded to issue process for the offence punishable under Sections 302 and 201 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code")against Accused Nos. 1 to 4—Respondent Nos. 2 to 5 in Writ Petition No. 2627 of 2024, under Section 204 of the Code, and dismiss the Complaint qua Accused Nos. 5 and 6, Respondent Nos. 2 and 3 in Writ Petition No. 2628 of 2024, under Section 203 of the Code.

3.9 The learned Magistrate was of the view that the specific allegations made by the Petitioner-complainant, in the light of the evidence and material on record, were sufficient to call upon the accused to explain the accusation. *Prima facie* complicity of Accused Nos. 1 to 4 was evident.

3.10 Being aggrieved by the order dismissing the complainant qua Acccused Nos. 5 and 6, under Section 203 of the Code, the Petitioner preferred Revision Application No. 95 of 2023. Whereas being aggrieved by the order of issuance of process for the offences punishable under Sections 302 and 201 read with Section 34 of the Penal Code, Accused Nos. 1 to 4 preferred Revision Application No. 90 of 2023.

3.11 By the impugned orders of even date, the learned Additional Sessions Judge allowed the Revision Application, preferred by Accused Nos. 1 to 4, and dismissed the Revision Application preferred by the Petitioner, observing *inter alia* that the order dated 10th December 2015 passed by the learned Magistrate, thereby declining to issue process agains the Accused under Section 204 of the Code had attained finality as the Petitioner-complainant had not assailed the said order. The Respondent-Accused had assailed only the direction issued by the learned Magistrate to register the FIR and re-investigate the matter. Thus even after remand of the matter back to the Court of the learned Magistrate, pursuant to the order passed by the High Court in Writ Petition No. 620 of 2017, the only course that was open to the learned Magistrate was to pass an order of dismissal of the complaint under Section 203 of the Code. In the view of the learned Additional Sessions Judge, two contrary orders could not have been passed by one and the same Court. Resultantly, the Revision Application filed by the Petitioner also came to be dismissed.

3.12 Being further aggrieved and dis-satisfied the Petitioner-complainant has invoked the writ jurisdiction.

4. I have heard Mr. Nitin Gaware Patil, the learned Counsel for the Petitioner, in both Petitions, Mr. Tushar Sonawane, the learned Counsel for Respondent Nos. 2 to 5 in Writ Petition No. 2627 of 2024 and for

Respondent Nos. 2 and 3 in Writ Petition No. 2628 of 2024 and Mr. D.J. Haldankar, the learned APP, for Respondent No.1-State, in both the Petitions.

5. Mr. Gaware Patil, the learned Counsel for the Petitioner would submit that the Petitioner, who has lost his son, is knocking the door of justice for over 15 years and the proceedings have yet not crossed the stage of issuance of process. The learned Additional Sessions Judge, according to Mr. Gaware Patil completely misconstrued the import and implications of the judgment and order passed by this Court in Writ Petition No. 620 of 2017. The learned Single Judge had interfered with the order dated 10th December 2015, directing the police to re-investigate the matter under Section 156 (3) of the Code, as the learned Magistrate could not have switched back to the provisions contained in Section 156 (3) of the Code, after taking the cognizance of the matter and making the enquiry under Section 202 of the Code.

6. Mr. Gaware Patil was at pains to drive home the point that the order of remand of the complaint back to the Court of learned Magistrate, plainly implied that the learned Magistrate had to conduct enquiry under Section 202 of the Code and pass an appropriate order. The order passed by this Court nowhere suggested that the earlier order of rejection of the prayer to issue process under Section Section 204 of

the Code had attained finality, as was erroneously held by the learned Additional Sessions Judge.

7. In opposition to this, Mr. Tushar Sonawane, the learned Counsel for the Respondents-Accused, strenuously submitted that the Respondents-Accused have suffered grave prejudice on account of the very pendency of the proceeding as the process itself has become a punishment. On account of the pendency of the complaint and the related proceedings, the Respondents, especially Respondent Nos. 1 to 4, have lost many opportunities in life. A case of pure accident has been relentlessly pursued as a homicidal death by the Petitioner sans any material.

8. Mr. Sonawane further submitted that, there is neither any jurisdictional error nor any legal infirmity in the impugned orders. Indisputably, the order passed by the learned Magistrate on 10th December 2015 categorically declining to issue the process against Respondents-Accused under Section 204 of the Code, was not assailed by the Petitioner-complainant. The Respondents-Accused had challenged the direction by the Magistrate to register the FIR and re-investigate the case under Section 156 (3) of the Code. It was in the Petition arising out of the said challenge, the High Court had remanded the matter back to the Court of the learned Magistrate.

9. The learned Additional Session Judge was, therefore, fully justified in observing that the order declining to issue process under Section 204 of the Code had attained finality, as there was no challenge to the said part of the order passed by the learned Magistrate. Once the issuance of process was declined by the learned Magistrate and the said order was upheld by the High Court, the only course open for the learned Magistrate was to dismiss the complaint under Section 203 of the Code. Thus, in exercise of supervisory jurisdiction, this Court ought not to interfere with the impugned orders, especially having regard to the time that has elapsed, submitted Mr. Sonawane.

10. In the light of the facts narrated above and the submissions canvassed across the bar, the moot question that come to the fore is the legal import and implications of the order passed by this Court in Criminal Writ Petition No. 620/2017. The learned Additional Sessions Judge was of the view that, despite the setting aside of the order dated 10th December, 2015 passed by the learned Magistrate directing Police to re-investigate the matter under Section 156(3) of the Code and remanding the matter back to the learned Magistrate to follow the procedure under Section 202 of the Code, the only course open to the learned Magistrate was to dismiss the complaint under Section 203 of the Code, as by the said order the learned Magistrate had declined the prayer of the complainant to issue process under Section 204 of the

Code. Whether this impression of the learned Additional Sessions Judge is legally sustainable ?

11. To explore an answer to the aforesaid question, it would be apposite to extract the relevant part of the order passed by this Court in Criminal Writ Petition No. 620/2017 so as to properly appreciate the import of the said order, especially the nature of the remand. The observations in the Paragraph No. 4 of the said order, and the operative order that follows Paragraph No. 4, read as under:

> *"4. The learned counsel for the petitioner placed reliance on some reported case like* ***(2017) 4 Supreme Court Cases 177****, (Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and others). The Apex Court has discussed the power of the Magistrate under Section 202 of the Code of Criminal Procedure and also under Section 173(8) of the Code of Criminal Procedure. In any case, the scheme of the Act itself shows that if the Magistrate takes cognizance of the matter and starts making inquiry under Section 202 of the Code of Criminal Procedure, that too in a case which is triable by the Court of Sessions, the only recourse open to him is to record the statements of all the witnesses, who are produced by the complainant, and then decide as to whether the case is made out to issue process. After taking cognizance of the matter and making inquiry under Section 202 of the Code of Criminal Procedure, it is not open to the Magistrate to revert back to Section 156(3) of the Code of Criminal Procedure. If the Magistrate wanted to see that more investigation is made before making order of inquiry under Section 202 of the Code of Criminal Procedure, the Magistrate could have made order of further investigation under Section 156(3) of the Code of Criminal Procedure. As that was not done, now the Magistrate cannot make such order. Further, the*

report of the concerned Police Station submitted after making investigation on the basis of previous order does not show that this report can be treated as one under Section 202 of the Code of Criminal Procedure. The Magistrate had no jurisdiction in the present matter to direct the police to make investigation as there was allegation of murder and the case would have been triable by the Court of Sessions in view of Section 202 (1) (a) of the Code of Criminal Procedure. Thus, the order under challenge could not have been made by the Magistrate and that needs to be set-aside. In the result, following order :-

ORDER

1. The petition is allowed.

2. The order of the learned Judicial Magistrate (F.C.), Manmad (Railways) dated 10.12.2015, passed in Regular Criminal Case No. 34 of 2011, directing Police to re-investigate the matter under Section 156(3) of the Code of Criminal Procedure is hereby set-aside.

3. The matter is remanded back to the learned Judicial Magistrate, First Class, Manmad (Railways) to follow the procedure as given in Code of Criminal Procedure after taking cognizance of the matter under Section 202 of the Code of Criminal Procedure. Rule made absolute in the aforesaid terms."

12. Evidently, this Court was of the view that, after taking cognizance of the matter and making an inquiry under Section 202 of the Code, it was not open to learned Magistrate to relegate the matter back to Section 156(3) of the Code. The Magistrate could have made an order for further investigation under Section 156(3) of the Code before proceeding to conduct an enquiry under Section 202 of the Code. Nor

the Magistrate could have directed the Police to conduct an investigation within the meaning of Section 202 of the Code, as it was alleged that an offence punishable under Section 302 of the Indian Penal Code, 1860 was committed and, thus, the interdict contained in clause (a) of the proviso to sub-Section (1) of Section 202 of the Code was attracted.

13. From the perusal of the aforesaid observations it also becomes evident that, this Court had adverted to the decision of the Supreme Court in the case of ***Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel & ors***[1]., to draw support to the view that after taking cognizance of the matter, it was not open to the Magistrate to switch back to Section 156(3) of the Code.

14. It would be contextually relevant to note that, the aforesaid decision in ***Amrutbhai Shambhubhai Patel (Supra)*** was subsequently overruled by a three-Judge Bench of the Supreme Court in the case of ***Vinubhai Haribhai Malaviya & ors. Vs. State of Gujarat & anr.***[2] The Supreme Court enunciated that, the 'investigation' spoken of in Section 156(3) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun. The definition of "investigation" under Section 2(h) of the Code of Criminal Procedure,

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1 (2017) 4 SCC 177

2 (2019) 17 SCC 1

1973, was not noticed by the judgments which held to the contrary, resulting in the erroneous finding in law that, the power under Section 156(3) of the Code can only be exercised at a pre-cognizance stage. It was thus held that, when Section 156(3) states that a Magistrate empowered under Section 190 may order "such an investigation", such Magistrate may also order further investigation under Section 173(8) of the Code, regard being had to the definition of "investigation" contained in Section 2(h). However, the said clarification in law by the Supreme Court in the case ***Vinubhai Haribhai Malaviya (supra)***, does not bear upon the controversy at hand.

15. The core controversy revolves around the nature of the aforesaid order of remand. Was the remand of a limited or restricted nature ? Or, whether the complaint stood fully restored to file of the Magistrate for further proceeding under Section 202 of the Code and passing further orders under the Code?

16. When the appellate or superior court remands a matter back to the Court of first instance or the Appellate Court, as the case may be, ordinarily, the entire matter remains open for consideration by the said Court, unless the order of remand is restrictive in nature and circumscribes the scope of adjudication or determination by the Court to which the matter is remanded. In case, the remand is with specific directions restricting the scope of adjudication, undoubtedly, the Court

of first instance/lower Appellate Court would be bound to exercise the jurisdiction within the confines of the order of remand. In the absence of such restrictive or limited remand, generally, the Court to which the matter is remanded would be empowered to decide the said matter on its own merits and in accordance with law, albeit having due regard to the observations in the order of remand.

17. A useful reference, in this context, can be made to a judgment of the Supreme Court in the case of ***United Bank of India, Calcutta V. Abhijit Tea Co. Pvt. Ltd. & ors.***[3], wherein the Supreme Court considered the effect of an order of remand passed by the Division Bench of the Calcutta High Court setting aside the decree passed by the Single Judge, in the context of the pendency of the said suit for the purpose of its transfer to the Debt Recovery Tribunal upon coming into force of "Recovery of Debts Due to Banks and Financial Institutions Act, 1993", in the State of West Bengal.

18. The Supreme Court observed *inter alia* as under:-

> *"16. But, it is now well settled that an order of remand by the appellate Court to the trial Court which had disposed of the suit revives the suit in full except as to matters, if any decided finally by the appellate Court. Once the suit is revived, it must, in the eye of the law, be deemed to be pending – from the beginning when it was instituted. The judgment disposing of the suit passed by the single Judge which is set aside gets effaced altogether and the continuity of the suit in the trial Court is restored, as a matter of law. The*

3 AIR 2000 SC 2957

> *suit cannot be treated as one freshly instituted on the date of the remand order. Otherwise serious questions as to limitation would arise. In fact, if any evidence was recorded before its earlier disposal, it would be evidence in the remanded suit and if any interlocutory orders were passed earlier, they would revive. In the case of a remand, it is as if the suit was never disposed of (subject to any adjudication which has becomes final, in the appellate judgment). The position could have been different if the appeal was disposed of once and for all and the suit was not remanded."*

19. The Supreme Court has enunciated that, an order of remand by the appellate court to the trial Court, which had disposed of the suit, revives the suit in full, except as to matters finally decided by the Appellate Court. The judgment passed by the trial Court which was set aside by the Appellate Court (while remanding the matter) gets effaced altogether and the continuity of the suit in the trial Court is restored, as a matter of law. In the case of a remand, it is as if the suit was never disposed of by the trial Court, subject to any adjudication which has become final by the Appellate Court judgment.

20. In the case of ***Rattanindia Power Limited vs. Maharashtra State Electricity Distribution Company Ltd. & anr.***[4], the Supreme Court postulated the legal position as to the consequence of remand, as under:-

> *"40. ……*
> *Ordinarily, when a matter is remanded the lis is alive, unless directed otherwise. Therefore, the lis has to be decided in*

4 2025 SCC OnLine SC 2936

> *accordance with law. Rather, it is duty of a court, whether it is trying original proceedings or hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same. No doubt, judicial discipline requires that directions of a higher court must be followed by the court subordinate to it. However, there may be a situation where following a direction may amount to violating the binding law laid down by a superior court or the Apex Court. In such a situation, where the lis is alive, the subordinate court or adjudicating body will have to apply and follow the law which holds the field on the day it decides the matter.*
>
> *41. In our view, when a Court or Appellate Tribunal remands a matter to the subordinate court, or adjudicating body, for a fresh decision in the light of observations contained therein, and while doing so refers to certain decisions, it does not mean that the subordinate court or adjudicating body is bound by those decisions and can look no further, even if, in the interregnum, the law has changed or developed. We must not be understood as saying that such a direction has to be ignored. Rather, such a direction must be given due consideration unless the law on the subject, which is binding on the court or adjudicating body, requires otherwise.*
>
> *42. For example, the law declared by this Court is binding on all courts within the territory of India. However, if such declaration comes later i.e., after the remand order, could it be said that it would not be followed because of certain general observations in the order of remand. The answer to it is an obvious "No". Reason being, when the remand order does not itself settles an issue, the issue remanded is alive and has to be decided as per law applicable on the date of the decision."*
>
> *(emphasis supplied)*

21. The Supreme Court has emphasized that, ordinarily when a matter is remanded, the lis is alive, unless directed otherwise. When the

remand order does not itself settles an issue, the issue remanded is alive and has to be decided as per the law applicable on the date of the decision.

22. A decision of a learned Single Judge of this Court in the case of ***Laxman Bapu Berad Vs. Sudhakar Nanasaheb Jawale***[5], also deserves to be noted. In the said case, upon remand of the matter by the High Court to the First Appellate Court with a direction to decide the Regular Civil Appeal afresh as per observations made in the order disposing the writ petition, the lower Appellate Court had, in turn, remanded the matter to the Trial Judge after setting aside the decree passed by the Trial Judge in the suit. When the competence of District Court to again remand the matter to the trial Court was questioned, the learned Single Judge pointed out the distinction between a restricted remand for a specific purpose with specific direction and the remand of the matter to the lower Court for deciding it afresh. The observations in Paragraph No. 5 read as under:

> *"5. There cannot be any dispute on the proposition that when a remand is a restricted remand for a specific purpose with specific directions, the Court to which the matter is remanded has jurisdiction only to comply those directions and it cannot reopen the whole case. Therefore when the Appellate Court finds that no proper opportunity to cross-examine or to call a particular witness is given or when the judgment does not decide some issue and gives directions to give further opportunity of the cross-examination or of calling such witness*

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5 1998 (2) Bom. CR 259

or directs the decision to the points left and specifies that remand is for that purpose only it would not be open for the Court to which the matter is remanded to open the whole case as if it is a de-novo trial. But when the remand is not a restricted remand and the matter is remanded to the lower Court for deciding it afresh on all contentions raised by the parties considering the relevant merits of those contentions, the matter is wide open before the lower Court and the lower Court shall have all the powers which it can exercise as if the matter has not gone to the superior Court subject to observations of superior Court. If such a remand is directed by the second Appellate Court or by the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India, on remand of such matter before the lower Appellate Court, the lower Appellate Court has all the options open including, in turn, remanding the matter to the trial Court if it thinks that such a course is necessary in the ends of justice."

(emphasis supplied)

23. Applying these principles to the facts of the case at hand, it deserves to be noted that, the matter before the learned Magistrate was in the realm of the proceedings under Chapter XV of the Code and by the order dated 05th August, 1997, this Court while setting aside the order of investigation under Section 156(3) of the Code directed the learned Magistrate to follow the procedure under the Code, especially Section 202 of the Code. The course to be adopted by the learned Magistrate after the remand of the complaint and completion of inquiry envisaged by Section 202 of the Code was not foreclosed by the said order. The learned Magistrate could have dismissed the complaint

under Section 203 of the Code or issued the process under Section 204 of the Code.

24. From the perusal of the aforeextracted order, it appears that this Court had explicitly set aside the order directing investigation under Section 156(3) of the Code and remanded the matter back to follow the procedure under the Code, after taking cognizance of the matter under Section 202 of the Code of Criminal Procedure, 1973. On a plain reading of the observations and the operative directions, it becomes evidently clear that, the order of remand was not so restrictive in nature as was construed by the learned Additional Sessions Judge. If this court were to uphold the order of learned Magistrate declining to issue the process under Section 204 of the Code, it would have been superfluous for this Court to remand the matter back to the learned Magistrate.

25. The view of the learned Additional Sessions Judge that, since the order declining issue of process under Section 204 of the Code was not assailed by the petitioner-complainant, it had attained finality, does not appear to be correct, as the order of remand implied that, the said decision not to issue process under Section 204 of the Code at that stage [in view of the directions for further investigation under Section 156(3) of the Code] was also interfered with by this Court. The order passed by the learned Magistrate could not have been read in a disjunctive manner. Process was declined under Section 204 of the Code, at that

stage, as the learned Magistrate considered it appropriate to have further investigation by police.

26. For the foregoing reasons, the impugned orders passed by the learned Additional Sessions Judge, do not appear to be in consonance with the law. Since the learned Additional Sessions Judge did not examine the merits of the matter and dismissed the complaint by completely misconstruing the order passed by this Court in Writ Petition No. 620/2017, there is no other go but to quash and set aside the impugned orders and restore the Revision Applications back to the Court of Session for a fresh decision in accordance with law.

27. Thus, the following order:-

: : O R D E R : :

i) The Writ Petition stands allowed.

ii) The impugned orders dated 06th January, 2024, in Criminal Revision Application Nos. 90/2023 and 95/2023 stand quashed and set aside.

iii) The Criminal Revision Applications stand restored to the file of Court of Session, Malegaon, Nashik for afresh decision on their own merits and in accordance with law.

iv) It is clarified that, this Court has not entered into the merits of the matter in regard to the issue of

process against Accused Nos. 1 to 4 and the dismissal of the complaint qua Accused Nos. 5 and 6.

v) The learned Additional Sessions Judge is requested to hear and decide the Revision Applications as expeditiously as possible.

vi) Rule made absolute in the aforesaid terms.

[N. J. JAMADAR, J.]