

MHCC020047182017



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IN THE SESSIONS COURT FOR GREATER MUMBAI
AT MAZGAON MUMBAI

CRIMINAL REVISION APPLICATION NO.395 OF 2017

Kamlakar Ratnakar Shenoy

Age: 58 years, Occ : Business

Residing at 2/7, Kishor Kunj CHS, Opp.
Kalvarts CO., Shanti Path Marg, Off
Shivdas Chapsi Marg, Mazgaon,
Mumbai- 400 010.

...APPLICANT

VERSUS

1. Mr. Dattray Karale

Presently Deputy Commissioner of Police,
Nasik City, Maharashtra

2. Mr. S. D. Jadhav

Then Deputy Superintendent of Police
Anti Corruption Bureau Thane
Presently posted at Jaat Padtalni Dept.
Pune.

3. Sanjay Mohite

Then Deputy Superintendent of Police
Anti Corruption Bureau Thane
Presently posted at Lokmanya Tilak Marg
Police Station, Mumbai.

...RESPONDENTS

4. Mr. Dattatray Datar

Then Deputy Superintendent of Police,
Thane.
(Presently retired)

5. The State of Maharashtra

Applicant in person.

APP K.F. Tadvī for respondent State.

**CORAM : H. H. THE ADDITIONAL SESSIONS JUDGE, SHRI KUNAL
DHANAJI JADHAV, COURT ROOM NO.87.**

DATED : 10th July, 2026.

J U D G M E N T

(Delivered on 10.07.2026)

1. The present revision application is filed under Section 397 of Cr.P.C. against the order below Exh.1 passed by the learned Metropolitan Magistrate, 62nd Court, Dadar, Mumbai dated 23.01.2017 in C.C. No.852/M/2016.

2. It is submitted that, the present applicant filed a complaint before the magistrate with a prayer to hold inquiry and issue process as per Section 200, 202 and 204 of Cr.P.C. for offence punishable under Section 107, 109, 204, 217, 218 r/w. 34 of IPC. It is alleged that, the accused are the Deputy Commissioner of Police-Anti Corruption Bureau, Dy. Supdt. Of Police – Anti Corruption Bureau all attached to office at Thane. That in the year 1988 to 1991 the developer of buildings at Nalasopara obtained commencement certificate and occupation certificate from the public servant/authority of the Nalasopara Municipal Counsel and Grampanchayat, Nilemore Village who had no authority to issue such certificates. CIDCO is the authority who was authorize to issue such certificates. The CIDCO did not take any action therefore, complainant filed complaint to the Lokayukta. The Lokayukta directed the ACB to conduct the inquiry and file report. The ACB report disclosed commission of offence and on the basis of the report action was initiated against the developer under MRTP Act and recommendations was made to register FIR against the public

servant under the prevention of Corruption Act. The present respondents failed to register the FIR against the public servant. Documents regarding the projects were obtained wherein forged certificates are used. The builder then challenged the said action of Lokayukta and the notice issued by CIDCO to pay the development charges. The Hon'ble Bombay High Court in the writ petition no.5424 to 5426 of 1996 dismissed the writ petition and observed that Municipal Council or Grampanchayat of Nalasopara was not authorized to issue commencement certificate and occupation certificate. It was also observed that developer was guilty of committing illegalities and thereafter the developer paid the development charges to CIDCO. Subsequently, as per the directions of Lokayukta in the report dated 04.01.1997 the documents of Nalasopara Council were taken by the ACB. The Lokayukta by its letter dated 19.06.1997 directed the DG, ACB to prosecute all concerned persons and the officials who were named in the letter. The Chief Secretary of Maharashtra State intervened the matter and called the file vide letter dated 03.07.1997 with direction not to take further action. The said file was handed over to Chief Secretary Maharashtra State and the file was pending from July 1997 to July 2006. On 04.07.2006 the State Government vide its letter directed the DG, ACB to proceed against the person involved in law. Accordingly, respondent No.1 directed registration of FIR. Monthly report was submitted and as per the report dated 05.05.2007 respondent No.4 disclosed that, preparation for registration of FIR was done. Subsequently, respondent No.4 framed incorrect record and writings and raised irrelevant queries whether any wrongful loss is committed to the public authority and vide letter dated 31.07.2007 closed the inquiry on the ground that,

illegality was regularized by payment of dues and no wrongful loss is caused to CIDCO. The said report was filed before the DG who accepted the report. Thus, the complaint came to be filed before the Home Minister. The government sought opinion from Law and Judiciary Department who stated that, there is no provision in law to regularize a criminal offence and therefore, gave opinion to the government to proceed against the accused even after regularization of illegal construction. The applicant by letter dated 07.03.2009 to the Home Department sought directions for permission to register FIR. More than 90 days elapsed no reply on the letter of permission for registration of FIR was received. The respondents were the duty bound to register FIR. They failed to do so and prepared and filed incorrect report which was accepted by respondent No.1. Thus, the respondents have misused the lawful authority. Therefore, complaint came to be filed.

3. The learned magistrate after hearing the complainant observed that the respondents are the public servants and the act alleged is very near and connected to their official duty. The allegations are in respect of act done in discharge of the official duties. The applicant did not produced sanction order to prosecute the respondent as per Section 197 of Cr.PC and therefore, gave time to the complainant to comply the order within reasonable time. Being aggrieved by the said order present revision is filed on various grounds.

4. Notice was issued to the respondent. Respondent though served with notice failed to remain present for hearing of the revision.

Thus, the matter was taken up for disposal as per law. Heard applicant in person. He filed written notes of arguments and additional notes of arguments at Exh.8 on dated 21.02.2026 respectively. After hearing the application this court received email communication from the applicant on dated 01.11.2025 wherein request was made for seeking transfer of Criminal Revision No.395 of 2017 (present revision) and Criminal Revision Application No.646 of 2017 making allegations against this court. Therefore, matter was postponed for order of transfer. Till date no order of transfer is received by this court. On inquiry with the office it is learnt that there is no formal application for transfer filed by the applicant. The applicant at Exh.12 filed application for pronouncing the reserved order. On the said application the applicant has specifically stated in his handwriting 'I have no objection if court passes order inspite of transfer application – Sd/-'. Hence, after obtaining the consent from the applicant the present revision is taken up for disposal as per law.

5. Perused record and Written notes of arguments. Following points arose for my consideration findings against it reasons following thereto.

Sr. No.	Points	Findings
1.	Whether the revision is maintainable ?	<u>...In the affirmative.</u>
2.	Whether the order of Ld. Magistrate is correct, legal and proper ?	<u>...In the negative.</u>
3.	Whether the order of Ld. Magistrate is require to be interfered ?	<u>...In the affirmative.</u>
4.	What order ?	<u>...As per final order.</u>

REASONS

As to all points :

6. The applicant in his written arguments and oral

submissions mentioned that, the builder had joint hands with public servants and prepared forged documents. The inquiry of Lokayukta revealed commission of offence and directions are given to the Anti Corruption Bureau to take action. Subsequently, directions were also given by the home department for registration of FIR to the Anti Corruption Bureau. The respondents were the incharge of the ACB office. They failed to register the FIR and filed incorrect report in contrast to the directions given by the lokayukta and Government of Maharashtra. Therefore, the respondents have committed offence. Preparing of false documents and accepting false documents is not the part of the duty and therefore no sanction is necessary. The applicant had sent letter to the home department for permission to register FIR on dated 07.03.2009 and the applicant has not received any reply from the concerned department. Therefore, as per provisions of Section 190 of Maharashtra Amendment to inquire and take cognizance against the respondent. Therefore, the order of the magistrate directing the applicant to obtain sanction within reasonable time is not proper. Hence, prayed to set aside the order and direct the magistrate to take cognizance in the matter.

7. APP submitted on behalf of the state that, the respondents after report of Lokayukta had carried out inquiry and at the end of inquiry it was found that the government authority did not loose any revenue as builder had already deposited the development charges to CIDCO. The respondent acted in their official capacity and therefore sanction was necessary prior to taking cognizance. Hence, the order of the magistrate is proper and prayed to dismiss the revision.

8. The applicant relied on following judgments :
- a. Tejas Pravin Dugad Vs. Union of India and others Bombay High Court CWP 1715 of 2020
 - b. Dinesh Sharma Vs. Emgee Cables and communication SPL (CRL no.10744-10745/2023;
 - c. Ram Sagar Vs.CBI SLP 2671/2021;
 - d. Inspector of Police and others Vs. Battenpatla Venkata Ratnam SLP Criminal Appeal 129 of 2013
 - e. Shadkashari Vs. State of Karnataka Criminal Appeal 256 of 2024;
 - f. Vinodkumar Pandey Vs. Vijay Agarwal and Others SLP (c) 7900 of 2019;
 - g. P Saravanan Vs. District Collectors of Hon'ble Madras High Court bearing writ Petition No.25846 and 30046 of 2018;
 - h. Dr. Rajesh Chandulal Shah Vs. State of Gujarat Misc. Application 3278 of 2018 dated 12.06.2018;
 - i. Krishna Prasad V/s. State of Bihar in CA No.8950 of 2011 dated 26.09.2019;
 - j. Harish Arora Vs. Registrar of Societies, 2025 SCC Online Bom 2833;
 - k. Sanjay and 3 others Vs. State of U.P. and others
 - l. Kumdan Jaywant Patil Vs. State of Maharashtra BHC W.P 5654 of 2025;
 - m. Siddharaman Salingappa Mhatre Vs. State of Maharashtra CRA 2271 of 2010 arising out of CLP(Cri.) 7615 of 2009;
 - n. Satendra Kumar Antil Vs. C.B.I. and others 2022 Live Law SC 571.

9. APP relied on following judgment :

Suneeti Toteja Vs. State of U.P & Another 2025 GoJuris(SC) 204.

10. The complaint is only against the police officers. Complaint in para No.3 gives details of the respondents. Being the officers of the rank of Commissioners or Superintendent of Police, respondents were attached to ACB office Thane. As per the allegation the incident starts with development issues in the area of Nalasopara within Taluka Vasai District Thane. As alleged that, forged commencement certificate and occupation certificate were prepared by builder in connivance with the officers in the Municipal Council at Nalasopara and Grampanchayat of Nilemore Village. It is alleged that the Municipal Council and the Grampanchayat had no authority to issue CC and OC and the same was authorised only by CIDCO. On perusal of the record the applicant has filed copies of the said commencement certificate and occupation certificate and said CC was issued by BMRDA metropolitan commissioner. The applicant also has filed copies of the OC issued by Nalasopara Municipal Council. As per the order of Hon'ble Bombay High Court in Writ petition No.5425 of 1996 it was held that, the builder obtained the permission from BMRDA though CIDCO was appointed as Special Planning Authority and did not approach respondent No.2 for obtaining OC. The Hon'ble High Court held that, it is thus clear that the petitioners are guilty of breach of provisions of the act and regulations. Subsequently, the builder deposited the development charges to CIDCO and CIDCO in *expost facto* regularize the construction. Subsequently, an inquiry was conducted on an application by applicant. The applicant has filed application before the Lokayukta. The Lokayukta directing the ACB to

take proper action against the concerned person and officials. Subsequently the secretary of Maharashtra government directed not to take action until 2006 when the government of Maharashtra directed the ACB to take action even then no FIR was registered. The concerned officer of ACB prepared report and informed that, there is no wrongful loss. Subsequently, a letter was issued to the home department and the home department sought opinion from the Law and Judiciary wherein a criminal Act cannot be regularized was opined and further action was directed. Even then FIR was not registered by respondent.

11. After multiple inquiries at different level where it is clear that offence was made out then no inquiry was necessary but for registration of FIR. It is alleged that the respondents had created false documents only to shield the erring public servants. Creating false documents does not come within the ambit of discharge of official duty as it is held in the case of Inspector of Police Sadakshari Vinodkumar Pandey(supra). The act which is not within the ambit of the colour of duty or which is not forming the part of discharge of official duty then as per Section 197 of Cr.P.C. no sanction from the government is necessary to prosecute the government officer who is removable from the office by the government. The applicant in his complaint has specifically stated that on 07.03.2009 he sought direction for permission to register FIR. Therefore, the observation of the magistrate in the impugned order that sanction was imperative is not in consonance with law.

12. It must be mentioned here that, the Hon'ble Bombay High Court in judgment in Writ Petition No.5425 of 1996 held that, CC and

OC ought to have been obtained from CIDCO rather than BMRDA and Municipal Council Nalasopara. The present complaint is filed against the officer who were posted at Thane and the event of development was carried out at Nalasopara. The letter of Lokayukta and the directions of Secretary State Government of Maharashtra and the letter communication filed on record revealed that all the directions were given to ACB at Thane the report was prepared at ACB at Thane. As per the complaint jurisdiction of the court at Dadar was because the offence of forgery took place at Mumbai, the bank account of builder was at Mumbai, the forged OC was issued at Mumbai, incorrect report of ACB was approved and accepted at Mumbai. It must be again repeated that, the present complaint is only against the police officer for dereliction of duty while they were officiating at ACB office Thane.

13. Therefore, the question arises whether complaint is filed in the court having jurisdiction.

14. Sections 156 (1), 157 (1), 162 (2), 169, 170, 173 (2) (i), 201 and 204 Cr.P.C. are relevant here.

1. S. 156 (1) Cr.P.C. – declares that the territorial jurisdiction of an officer incharge of police station is co-extensive with that of the appropriate Court which is competent to try the offence. (Vide para 5 of **T. P. Nandakumar v. State of Kerala 2008 Cri. L. J. 298**).

Chapter XIII of Cr.P.C. decides which Court shall conduct the “inquiry and trial” in respect of an offence. Ordinarily, it is the Court within whose territorial limits the offence was committed, has to try the same.

2. S. 157 (1) Cr.P.C. – mandates that the Officer in charge of police station after registering an FIR in respect of a cognizable

offence shall send a report of the same to “the Magistrate empowered to take cognizance of the offence”.

(The above provision shows that there is a Magistrate empowered to take cognizance of the offence).

3. S. 162 (2) Cr.PC – Even when an accused person produced before the nearest Magistrate under Section 167 (1) Cr.PC such Magistrate can only give the first remand under Section 167 (2) Cr.PC. If the remand of such person is to be further extended or if such a person is to be granted bail, he has to be forwarded under Section 167 (2) Cr.PC to “the Magistrate having the jurisdiction to try the accused or to commit him for trial”. In other words, a Magistrate who is competent to conduct an “inquiry” or “trial” alone has got the jurisdiction to “take cognizance of the offence”.

4. S. 169 Cr.PC. – In a case where it appears to the officer in charge of police station that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, then the officer in charge of police station shall, if the accused is in custody, release him on his executing a bond to appear, when so required, before a Magistrate empowered to “take cognizance of the offence” AND “try” the accused or “commit him for trial”.

(The Magistrate contemplated here is the Magistrate empowered to take cognizance of the offence and try the accused or commit him for trial).

5. S. 170 (1) Cr.PC. – In a case where there is sufficient evidence, or reasonable ground of suspicion, the officer in charge of police station shall forward the accused under custody to a “Magistrate empowered to take cognizance of the offence AND try the accused or commit him for trial”.

(The Magistrate envisaged here is also the Magistrate empowered to take cognizance of the offence and try the accused or commit him for trial).

6. S. 173 (2) (i) Cr.PC. – As soon as the investigation is completed, the officer in charge of police station shall forward to a “Magistrate” empowered to take cognizance of the offence on a “police

report”, a report in the form prescribed and incorporating the details enumerated in Section 173 (2) (i) Cr.PC.

(Here also the final report is to be forwarded by the police to the Magistrate empowered to take cognizance of the offence. There is, therefore, a Magistrate empowered to take cognizance of the offence).

7. S. 201 Cr.PC. – In the case of a private complaint also, Section 201 Cr.PC. envisages a situation “where a complaint is made to a Magistrate who is not competent to take cognizance of the offence.” If the complaint is in writing, Section 201 (a) obliges the Magistrate to return the complaint for presentation to the proper Court. If the complaint is an oral complaint, Section 201 (b) obliges the Magistrate to direct the complainant to the proper Court.

(This Section also contemplates a situation where a complaint is wrongly made to a Magistrate who is not competent to take cognizance of the offence. This means that there has to be a Magistrate competent to take cognizance of an offence).

8. S. 204 (1) Cr.PC. – It is the Magistrate taking cognizance of the offence and who is entitled to form an opinion that “there is sufficient ground for proceeding” who can issue summons or warrant, as the case may be, to the accused.

(Here also it is the Magistrate competent to take cognizance of the offence who can issue process to the accused. Going by Section 177 Cr.PC every offence shall ordinarily be inquired into and tried by the Court within whose local jurisdiction, the offence was committed. Apart from Section 177 Cr.PC, Sections 178 to 188 Cr.PC also will have to be referred to for deciding the jurisdiction of the Court competent to conduct inquiry or trial).

So, it is only “a Magistrate who has the jurisdiction to conduct an “inquiry” or “trial” as provided under Chapter XIII Cr.PC. who can take cognizance of the offence.

15. The magistrate while dealing with the complaint at the very inception must come to the conclusion that he has sufficient jurisdiction to take cognizance of the matter. The magistrate failed to

do so and passed very hyper technical order without applying its judicious mind. In these circumstances, the order of the magistrate requires to be interfered. Accordingly, I answer point No.1 in affirmative, point No.2 in negative and point No.3 in the affirmative and accordingly, I proceed to pass following order.

ORDER

1. Criminal Revision Application No.395 of 2017 is allowed.
2. The order below Exh.1 passed by the learned Metropolitan Magistrate, 62nd Court, Dadar, Mumbai dated 23.01.2017 in C.C. No.852/M/2016 is hereby set aside.
3. The learned magistrate is hereby directed to hear the complainant afresh and pass reasoned order considering the provisions of Section 200, 201, 202 of Cr.P.C.
4. Inform the learned trial court accordingly.
5. The learned trial court is directed to expedite the matter.

(Dictated and pronounced in open Court).

Date : 10.07.2026.

Direct Typed on : 10.07.2026

Checked and Signed on : 10.07.2026



**(KUNAL DHANAJI JADHAV)
ADDITIONAL SESSIONS JUDGE,
COURT ROOM NO.87,
CITY CIVIL & SESSIONS COURT
AT MAZGAON, GR. MUMBAI**

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”		
Upload Date	Upload Time	Mrs. Rupali S. Bhor Name of Stenographer
10.07.2026	6.10 p.m.	
Name of the Judge (With C.R. No.)		HHJ SHRI K. D. JADHAV (COURT ROOM No.87)
Date of Pronouncement of JUDGEMENT / ORDER		10.07.2026
JUDGEMENT / ORDER signed by P.O. on		10.07.2026
JUDGEMENT / ORDER uploaded on		10.07.2026