

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

CRIMINAL APPLICATION NO. 549 OF 2021

Bhansali Production Private Limited and Ors. ...Applicants
Versus
Babuji Rawji Shah and Anr. ...Respondents

Mr. Aabad Ponda, Senior Counsel a/w Mr. Parag Khandhar and Ms. Prachi Garg i/b DSK Legal, for the Applicants.

Mr. A. D. Kamkhedkar, A.P.P for the Respondent No.2 – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 10th AUGUST, 2021

P.C. :

1. Heard learned senior counsel for the applicants.
2. By this application, the applicants have impugned the order dated 15th March 2021, passed by the learned Metropolitan Magistrate, 69th Court, Mazgaon, Mumbai, below Exhibit- 1 in C.C. No.6900483/SS/2021, by which the learned Magistrate issued process as against the applicants and others for the alleged offences punishable under Sections 500, 501, 502 r/w 34 of the Indian Penal Code.
3. Learned senior counsel for the applicants submits that in April 2011 a book 'Mafia Queens of Mumbai' was published on the life of

Gangubai Kathiawadi and that a movie has been produced, based on the said book. He submits that the applicants had no knowledge of the existence of the respondent No.1 i.e. alleged adopted son of Gangubai Kathiawadi. He submits that the respondent No.1 claiming to be the adopted son of Gangubai Kathiawadi has alleged that he and his family have been defamed in the movie, which is based on his mother.

4. Learned senior counsel for the applicants submits that a Civil Suit for defamation was filed by the respondent No.1 before the City Civil and Sessions Court, Mumbai, and that the said Suit was dismissed by the Court on 17th February 2021. Learned senior counsel submits that the said fact, has been suppressed by the respondent No.1 in the criminal complaint filed by him, as against the applicants and others. He submits that a perusal of the complaint as well as the verification of the respondent No.1 so recorded shows, that the twin test as set out by the Apex Court in the case of ***Subramanian Swamy v/s Union of India, Ministry of Law and Others.¹***, is wanting and as such the order issuing process be quashed and set aside.

1(2016) 7 SCC 221.

5. Issue notice to the respondents, returnable on 7th September 2021. Learned APP waives notice on behalf of the Respondent No.2- State. In addition to the Court notice, Advocate for the applicants to serve the respondent No.1, by Advocate's notice and file affidavit of service before the next date.

6. In the meantime, till the next date, the proceeding before the trial Court, *qua* the applicants, is stayed.

REVATI MOHITE DERE, J.