

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRI. WRIT PETITION NO.: 106 OF 2012

1. Ajay Bharat Rajput (Vithoria)
Age: 27 years, Occu: Business,
2. Bharat Rajaram Rajput (Vithoria),
Age: 60 years, Occu: Nil.
3. Ramesh Rajaram (Vithoria),
Age: 65 years; Occ: Business,
4. Mira Bharat Rajput (Vithoria),
Age: 55 years, Occu: Household,
5. Shobha Ramesh (Vithoria),
Age: 60 years, Occu: Household,
6. Amol Bharat Rajput (Vithoria),
Age: 26 years, Occu: Service.
7. IYogesh Bharat Rajput (Vithoria),
Age: 20 years, Occu: Student.

All R/o: 1241, Ramdoh Oli, Wai,
Taluka: Wai, District: Satara.

... **PETITIONERS**
[ORIG. ACCUSED].

VERSUS

1. Sau. Mamta Ajay Rajput (Vithoria),
Age: 24 years, Occu: Household,
R/o: Kailash Nagar, Smashaan
Maruti Road, Purva Galli No.1,
Aurangabad, Taluka and
District: Aurangabad.
2. State of Maharashtra.
(Copy to be served on the
Public Prosecutors Office,
Bombay High Court, Bench at
Aurangabad).

... **RESPONDENTS**

Mrs. Rashmi S. Kulkarni, Advocate for the Petitioners.
Mr. R. R. Deshmukh, Advocate (Appointed) for Respondent No.1.
Mr. U. H. Bhogle, APP for Respondent No.2.

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CORAM:- T. V. NALAWADE, J.
DATED:- 2nd JULY, 2015.

ORAL JUDGMENT:

1. The petition is filed to challenge the order of issue process made in R.C.C. No.808 of 2011 by J.M.F.C., Aurangabad. In a private complaint filed for offence under section 498-A read with 34 of I.P.C. against the petitioners process has been issued. Both the sides are heard.
2. Learned counsel for the Petitioners submitted that the procedure as laid down in the amendment made to section 202 of Cr.P.C. is not followed by the learned J.M.F.C. She drew the attention of this Court to copy of complaint. It shows that the complainant is resident of Aurangabad and all the accused are shown to be the residents of Wai, District Satara. Thus, the petitioners, accused are not residing within the local jurisdiction of learned J.M.F.C., Aurangabad. In view of the provision of section 202 of Cr.P.C., as amended in the year 2006, it was necessary for the learned J.M.F.C. to postpone the order of issue process and make other inquiry under this section. Such procedure was not followed. Learned counsel for applicants relied on

the case reported as **2013 (2) SCC 488 (National Bank of Oman V/s Barakara Abdul Aziz and another)**. In this case, Apex Court held that the procedure under section 202, as amended in the year 2006, is mandatory in nature. In view of this position of law, this Court holds that the order of issue process made without following the procedure cannot sustain in law.

3. The petition is allowed. The order of issue process is hereby set aside. The matter is remanded back to the learned J.M.F.C. The learned J.M.F.C. is to follow the procedure laid down in section 202 Cr.P.C., as amended in the year 2006, and then make further orders.

4. It appears that the complainant did not turn up in the present matter. So, learned J.M.F.C. is to issue notice to the original complainant on court motion after receipt of the order of this Court.

5. Rule is made absolute in aforesaid terms.

6. Fees of learned counsel appointed by this Court is quantified as Rs.2,500/-.

[T. V. NALAWADE, J.]

Dated:02/07/2015.
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