

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 516 OF 2015

SHRI KRUSHNA S/O SHALIGRAM NIPHADKAR

VERSUS

SAU. MANJU WD/O DINESH DESHMUKH

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Advocate for Petitioner : Mr. Tiwari Suraj P.

Advocate for respondent: Mr. C. R.Thorat

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CORAM : T. V. NALAWADE

DATE : 13th July, 2015

PER COURT :

1. Heard both sides.

2. Challenge to the order of issue process is on limited ground. It is contended that the procedure as laid down by amended provisions of Section 202 of Criminal Procedure Code (as amended in 2005) is not followed by the learned Judicial Magistrate, First Class even when the respondent accused is resident of Nashik and the complaint is filed in the Court of Chief Judicial Magistrate, Aurangabad. The learned counsel for the present petitioner placed reliance on the case reported in **2013 (2) SSC 488 (National Bank of Oman Vs. Barakara Abdul Aziz and another)**. In this reported case, the Apex Court has laid down that the procedure under Section 202 of the Criminal Procedure Code as amended is mandatory in nature.

Admittedly, in the present proceedings, there was no order of postponement of issue process and no enquiry was conducted as required under section 202 Cr. P. C. In view of the law laid down by the Apex Court and the facts of the present case, this Court holds that the order of issue process needs to be set aside.

3. The criminal writ petition is allowed. The order of issue process is set aside.

4. Matter is remanded back to the learned Chief Judicial Magistrate. Learned C.J.M. is to follow the procedure laid down under section 202 of the Cr.P.C. and then pass further orders.

5. The complainant to appear before the learned CJM on 10.08.2015.

(T. V. NALAWADE, J.)

JPC