

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

CRIMINAL APPLICATION NO. 3035 OF 2014

1. Bhausahab Ashruba Palve
Age 31 yrs., Occu. Agri.
2. Ashruba s/o Punjaba Palve,
Age 60 yrs., Occ. Agri.
3. Subabai w/o Ashruba Palve
Age 55 yrs., Occ. Household
No. 1 to 3 r/o Palvewadi, Tq. Pathardi,
Dist. Ahmednagar.
4. Nandabai Kakasaheb Dahiphale
Age 38 yrs., Occ. Household
r/o Mohada, Tq. Pathardi,
Dist. Ahmednagar.
5. Mandabai Dagadu Bade,
Age 35 yrs., Occ. Household,
r/o Chinchpur Pangul, Tq. Pathardi,
Dist. Ahmednagar.
6. Binabai Nitin Golhar,
Age 33 yrs., Occ. Household,
r/o Wamanbhau Nagar, Pathardi,
Tq. Pathardi, Dist. Ahmednagar.
7. Anita Rajendra Bade,
Age 32 yrs., Occ. Household,
r/o Chinchpur Pangul, Tq. Pathardi,
Dist. Ahmednagar.

**...Applicants
(Ori.alleged accused)**

Versus

1. The State of Maharashtra.

2. Ranjana w/o Bhausahab Palve
Age 26 yrs., Occ. Household,
r/o Palvewadi, Tq. Pathardi,
Dist. Ahmednagar. At present residing at
Jatwad, (Manur), Tq. Shirur (Kasar)
Dist. Beed.

...Respondents

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Shri. S. L. Bhapkar, Advocate for the applicants
Shri. S. G. Nandedkar, APP for respondent/State
Shri. N. K. Tungar, Advocate for respondent No. 2
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CORAM : SMT. SADHANA S. JADHAV, J.
DATED : APRIL 13TH, 2015.

ORAL JUDGMENT: -

. Heard. Rule. Rule made returnable forthwith
with the consent of parties.

2. The present applicants happen to be accused in
RCC No. 26 of 2014, pending before the learned Judicial
Magistrate First Class, Shirur (Kasar), Dist. Beed
(hereinafter shall be referred to as "JMFC"). That, present
respondent No. 2, who happens to be the original
complainant had filed the complaint against the applicants
for offence punishable under Sections 307, 498-A, 323, 504,
506 read with 34 of the Indian Penal Code. The learned

Magistrate had recorded the verification of the complainant on 12th February, 2014. By order dated 28th February, 2014, the Id. JMFC had issued process against the accused for the said offences and has summoned the accused on payment of process fees. The applicants herein claim that, they are normally residing beyond the territorial jurisdiction of the Court which had issued process. The present applicants happen to be resident of Pathardi, Dist. Ahmednagar, whereas the process has been issued by the Court at Shirur (Kasar), Dist. Beed. The learned Counsel for the applicants submits that the learned Magistrate ought not to have issued process against the present applicants without considering the provisions under Section 202 of the Code of Criminal Procedure (Cr.P.C).

202. Postponement of issue of process .-(1)

Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, ⁹⁸[and shall, in a case where the accused is residing at a place beyond the area in which he exercises his

jurisdiction], postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,—

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200 .

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath .

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant .

2. Learned Counsel for the applicants submits that, at the time of verification of the statement of the complainant, the learned Court ought to have noticed that the present applicants who happen to be the accused in the said case reside beyond the territorial jurisdiction of the Court and, therefore, ought to have postponed the issuance of process. Learned Counsel for respondent No. 2 submits that, it is true that it is an irregularity however, the said irregularity is curable. The proceedings cannot be quashed only on the ground that the learned Magistrate has issued process in non-compliance of Section 202 of Cr.P.C.

3. Taking into consideration the facts of the present case and the submissions advanced across the bar, this Court is inclined to remand the matter to the Court of JMFC, Shirur (Kasar), Dist. Beed, for reconsideration after

recourse to Section 202 of Cr.P.C. It cannot be said that it is necessary for the learned JMFC to recall the process. The learned Magistrate shall issue notice to the accused under Section 202 of Cr.P.C. and then consider the stage for issuance of process. The order dated 20th February, 2014 is quashed for the limited purpose and the matter is being remanded for the reconsideration and compliance of Section 202 of Cr.P.C. The order has been set aside only for the purpose of correcting the irregularity.

Rule made absolute in above terms with no order as to costs.

(SMT. SADHANA S. JADHAV, J.)