

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

Criminal Application No.4170 of 2014

Prakash s/o Eknath Bade
Age 40 years,
Occupation : Agriculture,
R/ Chinchpur Pangul,
Taluka Pathardi,
District Ahmednagar.

.. Applicant.

Versus

Gangamai Agro Trust
Through its authorized person
Shri Suresh Murlidhar Hiwarde,
Age 30 years,
Occupation : Service,
R/o Harinagar, Ghatnandra,
Taluka Sillod, District Aurangabad.

.. Respondent.

With

Criminal Application No.4168 of 2014

Popat s/o Dashrath Bade
Age 40 years,
Occupation : Agriculture,
R/ Chinchpur Pangul,
Taluka Pathardi,
District Ahmednagar.

.. Applicant.

Versus

Gangamai Agro Trust
Through its authorized person
Shri Suresh Murlidhar Hiwarde,

Age 30 years,
Occupation : Service,
R/o Harinagar, Ghatnandra,
Taluka Sillod, District Aurangabad. .. **Respondent.**

With

Criminal Application No.4169 of 2014

Sonaji s/o Murlidhar Bade,
Age 36 years,
Occupation : Agriculture,
R/ Chinchpur Pangul,
Taluka Pathardi,
District Ahmednagar. .. **Applicant.**

Versus

Gangamai Agro Trust
Through its authorized person
Shri Suresh Murlidhar Hiwarde,
Age 30 years,
Occupation : Service,
R/o Harinagar, Ghatnandra,
Taluka Sillod, District Aurangabad. .. **Respondent.**

Shri. K.D. Bade Patil, Advocate, for applicant.

Shri. Sunil B. Kakde, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 23rd JUNE 2015

ORDER:

1) All the three applications are filed for relief of quashing and setting aside the orders made on applications filed by the accused in three criminal cases filed for offences punishable under section 138 of the Negotiable Instruments Act. Relief is also claimed to quash and set aside the order of issue process and for giving direction to the Judicial Magistrate to follow the procedure provided in section 202 of the Code of Criminal Procedure (as amended in the year 2006) as accused is resident of place situated out side of local jurisdiction of Magistrate. Both the sides are heard.

2) The order made by the learned Judicial Magistrate shows that the Magistrate has observed that he has no power to recall the order of issue process and the remedy available to the accused is to file proceeding like proceeding under section 482 of the Code of Criminal Procedure. The applications filed by the accused in this regard were rejected also cost was imposed by the Magistrate.

3) Today learned counsel for the accused placed reliance on case reported as **(2013) 2 SCC 488 (National Bank of Oman v. Barakara Abdul Aziz)** and also **(2009) 15 SCC 199 (K.T. Joseph v. State of Kerala)**. In the aforesaid cases the Apex Court has laid down that in view of the amended provision of section 202 of the Cr.P.C. the Magistrate should follow the procedure laid down in section 202 of the Cr.P.C. Admittedly such procedure was not followed by the learned Judicial Magistrate. This Court in the case reported as **2012 (3) Mh.L.J. 724 (Netcore Solutions Pvt. Ltd. v. Pinnacle Teleservices Pvt. Ltd.)** (Nagpur Bench) has considered the aforesaid cases and this Court has set aside the order of issue process. In view of this position of law this Court holds that the proper procedure needs to be followed by the learned Judicial Magistrate. Only this point is involved in the present proceedings according to the learned counsel and no other point is involved, in view of position of law. The learned Judicial Magistrate can also consider other aspects of the matter.

4) In the result, the applications are allowed. The orders of issue process are quashed and set aside. The matters are remanded back to the Judicial Magistrate. The Judicial Magistrate to follow the procedure given in section 202 of the Cr.P.C. and consider the matter afresh for the purpose of issue process. The provisions of sections 118 and 139 of the Evidence Act can be used and inquiry can be limited by using those provisions. This exercise is to be completed by the Judicial Magistrate within one month from the date of receipt of this order. Rule is made absolute in aforesaid terms.

Sd/-
(T.V. NALAWADE, J.)

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