

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4811 OF 2013

Mr. Ashok s/o. Keshavrao Shiras**Applicant**

Versus

Virgin Seeds and Anr.**Respondents.**

Mr. P.K. Lakhotiya, Advocate for applicant.

Mr. M.S. Kokate, Advocate for respondent No. 1.

Mrs. R.K. Ladda, APP for State.

CORAM : T.V. NALAWADE, J.
DATED : 15th July, 2015.

ORDER :

1. The proceeding is filed to challenge the order of issue process made in SCC No.391/2012 which is pending in the Court of J.M.F.C., Aurangabad. Both the sides are heard.

2. The learned counsel for applicant/accused submitted that when the accused is resident of Nagpur and the complaint is filed in Aurangabad, the procedure given under section 202 of Cr.P.C. as amended in the year 2006 is not followed by J.M.F.C. He placed reliance on the case reported as **(2013) 2 SCC 488 (National Bank of Oman Vs. Barakara Abdul Aziz)** and also the case reported as **2014 ALL MR (Cri) 2159 (Shri Sattar**

Bhaimiya Mansuri & Ors Vs. Sau. Shabana Arif Mansuri & Anr.). The Apex Court has laid down that the procedure given in section 202 of Cr.P.C. as amended is mandatory in nature and the Magistrate should postpone the order of issue process and then make inquiry or order of investigation under section 202 of Cr.P.C. and only after material made available after inquiry or investigation, he can consider the matter for issue process. This amendment is made to safeguard the interest of the persons who are residents of other place as they will be required to come to the Court from long distance. In view of this position of law interpreted by the Apex Court, the order cannot sustain in law.

3. So, the application is allowed. The order made by the learned J.M.F.C. Aurangabad of issuing process is quashed and set aside. The matter is remanded back to the Court of J.M.F.C. Aurangabad for passing fresh order, uninfluenced by the observations made by this Court. The Magistrate is to consider the matter afresh only after complying the provision of section 202 of Cr.P.C. This is to be done by the Magistrate within two months after the receipt of the copy of this order.

[T.V. NALAWADE, J.]

SSC/