

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1111 OF 2015

Pravin s/o Mohan Gadia and another

.....Petitioners

V/s.

The State of Maharashtra and another

....Respondents

Mr. Abhaykumar D. Ostwal a/w Mr. Pavan S. Patil for Petitioners

Mr. Rahul S. Kate for respondent no. 2

Mr. D. R. More APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : OCTOBER 6, 2015.

PC :

Heard respective counsel.

2) Rule. Rule made returnable forthwith with the consent of parties.

3) Complainant/respondent in the present case had filed a complaint before Judicial Magistrate First Class, Khadki, Pune against present petitioners on 01/09/2014 alleging therein that petitioners have committed an offence under section 420, 465, 471, 504, 506 r/w 34 of Indian Penal Code. Learned Magistrate was pleased to post the matter for verification. Accordingly the verification was recorded. Learned Magistrate had perused

ism

the documents annexed along with the complaint. Learned Magistrate by an order dated 19/09/2014 was pleased to issue process against present petitioners for offence punishable under sections 420, 465 r/w 34 of Indian Penal Code.

4) Being aggrieved by the said order of issuance of process, petitioners herein have filed Criminal Revision Application No. 580 of 2014 before learned Sessions Court at Pune. The Revisional Court by an order dated 20/02/2015 was pleased to dismiss the revision application. Being aggrieved by the said order, petitioners have approached this Court by filing present writ petition.

5) Learned counsel for the petitioners candidly submits that before revisional court, the issue of compliance with the mandate of section 202 of Code of Criminal Procedure, 1973 was not raised. In the present writ petition, learned counsel for the petitioners specifically submits that learned Magistrate has over looked the fact that petitioners herein were not residing within the jurisdiction of learned Magistrate.

6) Section 202 of Code of Criminal Procedure, 1973 reads as follows:

“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, 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 witness 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.”

7) Learned counsel for the petitioners rightly submits that by Act 25 of 2005, the Legislature has incorporated the the condition :

“and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction”.

8) It is therefore clear that the Legislature has mandated the postponement of issuance of process till notices are issued to the proposed accused who live beyond the area of exercise of jurisdiction by the concerned Magistrate. This would not vitiate the proceedings, but it is a curable irregularity.

9) In the case of **National Bank of Oman V/s Barakara Abdul Aziz (2013) 2 SCC 488** the Hon'ble Apex Court has observed that:

“In cases where accused resides beyond the area over which Magistrate concerned, it is incumbent upon the Magistrate to carry out an enquiry or order investigation under section 202 before issuing process.”

10) In that case also, accused were being tried for offence punishable under section 420 and 418 of Indian Penal Code. The Hon'ble Apex

Court in para 12 of the Judgment has held that:

“The High Court instead of quashing the complaint, should have directed the Magistrate to pass fresh orders, following the provisions of section 202 of Code of Criminal Procedure.”

11) In view of this, this Court is inclined to remand the matter to the court of learned Judicial Magistrate First Class, Khadki Pune to pass orders under section 202 of Code of Criminal Procedure, 1973. Hence, following order.

ORDER

- (i) Writ Petition is allowed.
- (ii) Order of issuance of process dated 19/09/2014 passed in R.C.C. No. 291 of 2014 by Judicial Magistrate First Class, Khadki, Pune is hereby quashed and set aside.
- (iii) Learned Magistrate shall follow the mandate of section 202 of Code of Criminal Procedure, 1973 and thereafter pass appropriate orders in accordance with Law.
- (iv) It is made clear that petition has not been heard on merits of the matter.

(v) Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.