

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 317 OF 2015

Chemcell Biotech Limited & Ors.	...	Applicants
vs.		
Astec Life Sciences Limited & Anr.	...	Respondents

Mr.Subhash Jha i/b. Law Juris, Advocate for the applicants
Mr. Faran Khan i/b. Mr. Sharique Raheel Nachan for respondent No.1..
Ms. A.A.Mane, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 8th October, 2015.

P.C.

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

2. The applicants herein, being aggrieved by the order of issuance of process against them by the Metropolitan Magistrate, Ballard Pier, Mumbai in C.C. No.3800023/SW/2012, have approached this Court for quashing and setting aside the order dated 18.11.2013 as well as for quashing the complaint as not maintainable.

3. It appears that the respondent No.1 had filed the complaint before the Metropolitan Magistrate, Ballard Pier, Mumbai, which was registered as C.C. No.23/SW/2012 alleging therein that the applicants herein have committed offences punishable under Sections. 417, 418, 420, 120B read with Section 34 of Indian Penal Code.

4. Upon perusal of the copy of the complaint, it appears that the office of the complainant is situated at Mumbai, whereas the applicants herein are residents of Andhra Pradesh. In view of this, the learned Magistrate ought to have taken recourse to Section 202 of Cr.P.C. Section 202 reads as follows :-

“202. Postponement of issue of process (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in 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

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(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”.

The very fact that the applicants were residing outside the jurisdiction of the Court of Metropolitan Magistrate, Ballard Pier, Mumbai, the learned Magistrate ought to have exercised the powers under Section 202 of Cr.P.C. The said provision is mandatory in nature. The order dated 18.11.2013 is taken on record and marked “X” for the purpose of identification. In view

of this, the order date 18.11.2013 thereby issuing process against the accused without taking recourse to Section 202 of Cr.P.C. deserves to be quashed and set aside. It is a curable irregularity and, therefore, the matter needs to be remanded to the Court of Metropolitan Magistrate to exercise the powers under Section 202 of Cr.P.C. and thereafter pass appropriate orders in accordance with law.

ORDER

- (i) The application is allowed.
- (ii) The order dated 18.11.2013 passed by the learned Magistrate, Ballard Pier, Mumbai, is quashed and set aside.
- (iii) The matter is remanded to the Court of Metropolitan Magistrate, Ballard Pier, Mumbai,
- (iv) The learned Magistrate shall proceed with the matter within three weeks from the date of this order and exercise the powers under Section 202 of Cr.P.C.

Writ Petition is allowed in the above terms and stands disposed of. Rule is made absolute accordingly.

(SMT.SADHANA S.JADHAV, J.)

CERTIFICATE

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