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

CRIMINAL WRIT PETITION NO. 610 OF 2015

1. Pancharatna Metal Processing Ltd.
Comp. Regd. Address 5-2-202 to 205,
2nd Floor, Balaji Market, Distillery Road,
Ranigunj, Shikanderabad 500003
2. Mr. Kishore s/o Murlidhar Agarwal,
Age: 59 years, Occu: Business,
R/o 8-2-120/77, Plot No. 92-A,
Next lane to TDP office Banjara Hills,
Road-2, Hyderabad – 500034
3. Mr. Shankar S/o Kishore Agarwal,
Age: 30 years, Occu: Business,
R/o 8-2-120/77, Plot No. 92-A,
Next lane to TDP office Banjara Hills,
Road-2, Hyderabad – 500034
4. Mrs. Aruna W/o Kishore Agarwal,
Age: years, Occu: Business,
R/o 8-2-120/77, Plot No. 92-A,
Next lane to TDP office Banjara Hills,
Road-2, Hyderabad – 500034

..PETITIONERS

VERSUS

1. M/s. Raghuveer Steel-Partnership
firm, Jalna, Through its Partner
Mr. Laxminivas S/o Omprakashji Mallawat,
Age: 43 years, Occu: Partner
M/s. Raghuveer Steel, Jalna,
R/o. House No. 2-20-64, Kadrabad,
Bhajimadi, Jalna, Tq. & Dist. Jalna

2. The State of Maharashtra

..RESPONDENTS

Mr Vijay Sharma, Advocate holding for Mr V. S. Bagdiya, Advocate for
petitioners;

Mrs A. N. Ansari, Advocate for respondent No. 1

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CORAM : N.W. SAMBRE, J.**DATE : 5th April, 2016****ORAL ORDER :**

Respondent no.1 – partnership firm initiated Criminal Misc. Application No.864 of 2014 against the petitioners, alleging that the goods though were shown to have been delivered, in fact, were not delivered by drawing the forged documents of delivery and as such the petitioners committed offences punishable under sections 409, 420, 468 read with section 34 of the Indian Penal Code.

2. Learned Judicial Magistrate First Class (Court No.2), Jalna, having taken note of the same, proceeded to deal with the complaint preferred under section 156 (3) of the Code of Criminal Procedure (for short “Code”), without taking recourse to calling of report of the police officer under section 202 of the Code and directing respondent no.1 – complainant to place on record its evidence, by order dated 5th December, 2014. The Magistrate thereafter ordered issuance of process on 9th January, 2015. Both these orders were subject-matter of challenge before learned Additional Sessions Judge, Jalna, in Criminal Revision Application No.37 of 2015, which came to be dismissed on 18th April, 2015. Thus, the present petition.

3. Relying upon the judgment of the Apex Court, in the matter of **Vijay Dhanuka, etc. vs. Najima Mamtaj, etc.**, reported in **AIR 2014 SC (Supp)**

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756, Mr Sharma, learned Counsel appearing on behalf of the petitioner would urge that the Magistrate knowing fully well that the petitioners – accused are living beyond territorial jurisdiction of his court had not taken recourse to the provisions of section 202 of the Code. According to him, the judgment in the matter of Vijay Dhanuka (supra) makes it mandatory that in case if the accused are residing outside territorial jurisdiction of the Magistrate, he must call for a report under section 202 of the Code.

4. While opposing the prayer, Mrs Ansari, learned Counsel appearing on behalf of respondent no.1 – complainant would submit that though the report under section 202 of the Code is not called out, the Magistrate has considered the material evidence that is brought on record before issuance of process and the revisional court has rightly appreciated and upheld the orders. According to her, petition deserves dismissal without any interference.

5. Upon consideration of the submissions, it is not in dispute that the petitioners – accused are residents of Telangna State, which is outside territorial jurisdiction of the Magistrate who has taken cognizance. Perusal of the allegations in the complaint depicts that the complaint is arising out of certain business transactions between the complainant and the accused persons. The contents of the complaint as such relate to certain acts which have taken place beyond territorial jurisdiction of the Magistrate. In this background, in my opinion, Mr Sharma has rightly invited attention of this Court to the provisions of section 202 of the Code and the judgment of

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the Apex Court in the matter of Vijay Dhanuka (supra). Appropriate support can be drawn from the above referred judgment, particularly, paragraphs 11, 12, 13 and 14, which read thus :-

“11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process “in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not. The words “and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” was inserted by Section 19 of Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23rd of June, 2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows:

“False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.”

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12. The use of the expression 'shall' prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate. In view of the decision of this Court in the case of [Udai Shankar Awasthi v. State of Uttar Pradesh](#), (2013) 2 SCC 435, this point need not detain us any further as in the said case, this Court has clearly held that the provision aforesaid is mandatory. It is apt to reproduce the following passage from the said judgment:

"40. The Magistrate had issued summons without meeting the mandatory requirement of [Section 202](#), CrPC, though the appellants were outside his territorial jurisdiction. The provisions of [Section 202](#), CrPC were amended vide the [Amendment Act](#), 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding

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against the accused before issuing summons in such cases.”

(underlining ours)

13. *In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under [Section 202](#) of the Code. The word “inquiry” has been defined under [Section 2\(g\)](#) of the Code, the same reads as follows:*

“2. xxx xxx xxx

(g)”inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

xxx xxx xxx”

14. *It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or Court is an inquiry. No specific mode or manner of inquiry is provided under [Section 202](#) of the Code. In the inquiry envisaged under [Section 202](#) of the Code, the witnesses are examined whereas under [Section 200](#) of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under [Section 202](#) of the Code. In the present case, as we have stated earlier, the Magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of process.”*

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6. The fact remains that in the present case, the Magistrate has lost sight of above referred provision and requirement thereof, particularly in the background of the fact that the petitioners-accused are residents of an area outside his territorial jurisdiction.

7. In view thereof, in my opinion, the orders dated 5th December, 2014 and 9th January, 2015, passed by the learned Judicial Magistrate First Class (Court No.2), Jalna and the order dated 18th April, 2015, passed by learned Additional Sessions Judge, Jalna, in Criminal Revision Application No.37 of 2015 are not sustainable and as such stand quashed and set aside.

The matter is remitted to the learned Magistrate, to decide the same afresh, in accordance with the observations made herein above by taking recourse to the provisions of section 202 of the Code.

Respondent no.1 – complainant undertakes to appear before the learned Magistrate on 18th April, 2016.

It is expected of the learned Magistrate to deal with and decide the issue expeditiously.

Criminal writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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