

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

CRIMINAL WRIT PETITION NO. 227 OF 2006

Akramkhan s/o. Gulam Khadar Khan,
Age 35 years, Occu. Agriculture,
R/o. AUSA, Taluka AUSA,
District Latur.

....Petitioner.

Versus

1. Sunil s/o. Gurappa Mali,
Age 37 years, Occu. Transport Business,
R/o. Rajshri Theatre Beside Maruti
Temple, Junipeth Omerga,
Taluka Omerga, Dist. Osmanabad.

2. The State of Maharashtra

....Respondents.

Mr. S. P. Katneshwarkar, Advocate for petitioner.

Mrs. S.S. Raut, APP for State/respondent.

CORAM : T.V. NALAWADE, J.

DATED : 23rd January, 2017.

ORAL JUDGMENT :

1) The proceeding is filed to challenge the decision of Criminal Revision Application No. 79/2005, which was pending in the Court of learned Additional Sessions Judge, Latur. The revision was filed to challenge the order of issue process made by the learned Judicial Magistrate, First Class, AUSA in S.T.C. No. 1121/2002. Revision is allowed by the Sessions Court and the order of issue process is set aside. Further, order is made and the complaint, proceeding is quashed. Heard the learned counsel for petitioner. Nobody turned up for respondent No. 1, accused

though respondent No. 1, accused was served.

2) The record shows that the private complaint was filed under section 138 of Negotiable Instruments Act in respect of cheque of Rs. four lakh, which was dishonoured. It appears that the J.M.F.C. had made the order of issue process without following the procedure laid down under section 200 of Criminal Procedure Code viz. without recording the verification of the complainant and witnesses, if any. The learned Additional Sessions Judge has referred two cases for setting aside the order like cases reported as **1982 (1) Bom.C.R. 117 [Suresh Mohanlal Goradia Vs. Hiralal G. Thakkar]** and **2000 (3) Crimes page 198 [Harihara Iyer Vs. State of Kerala]**. This Court had observed in the case of **Suresh Goradia** cited supra that procedure laid down in section 200 is mandatory in nature and without following that procedure, if the order of issue process is made, that is liable to be set aside.

3) Even if the aforesaid proposition is accepted as it is, the complaint itself could not have been quashed by the learned Additional Sessions Judge. If the provision of section 200 casts duty on the Court to follow such procedure then the complainant cannot be made to suffer, if the Court has not followed that procedure. It appears that in Criminal Revision also such

submission was made, but such submission was not accepted. The case filed under section 138 of Negotiable Instruments Act is not only on the basis of oral allegations, but that has record like cheque, bank remark with regard to dishonour, notice etc. In such a case, ordinarily as per the old law recording of verification only was sufficient if there was no other hurdle in issuing process. The judgment delivered by the Sessions Court does not show that any other point was involved in the matter. In view of these circumstances, this Court holds that the learned Sessions Judge has committed serious error in quashing the complaint itself. If the Magistrate needs to follow the procedure given in section 200 of Cr.P.C., the Sessions Court was expected to make such observations by allowing the revision. In view of this position of law, this Court holds that the order made by the learned Judge of Sessions Court of quashing the proceeding itself cannot sustain in law. To that extent, the present proceeding is allowed. The order of setting aside the order of issue process made by J.M.F.C. is not disturbed. Complaint remains there and the Magistrate is expected to follow the procedure given in section 200 of Cr.P.C. and then to take further steps.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/