

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

CRIMINAL APPLICATION NO. 1716 OF 2017

Pragati Santosh Sangle,
Age 27 years, Occupation Household,
R/o Kranti Nagar, Patoda
Tq. Patoda Dist. Beed.

...Applicant

Versus

1) The State of Maharashtra,
Through Its Secretary,
Home Department,
Mantralaya, Mumbai – 32.

2) Vishnu Sitaram Sangle,
Age 58 years, Occupation Service,
R/o Sangalwadi Tq. Shirur (K)
Dist. Beed.

3) Kusumbai Vishnu Sangle,
Age 53 years, Occupation Service,
R/o Sangalwadi Tq. Shirur (K)
Dist. Beed.

...Respondents

Mr. P. V. Jadhavar, Advocate holding for Mr. A. N. Nagargoje,
Advocate for applicant
Mr. A. R. Kale, Additional Public Prosecutor, for respondent
No.1
Mr. S. J. Salunke, Advocate for respondents No.2 and 3.

CORAM : SMT. VIBHA KANKANWADI. JJ.
DATE : 23-11-2017

ORAL JUDGMENT :

1. Taken up for final hearing with consent of both the parties at the stage of admission.
2. Present applicant has invoked the inherent jurisdiction of this Court under Section 482 of Code of Criminal Procedure in order to challenge the order passed by learned Sessions Judge, Beed, in Criminal Revision Petition No.128 of 2014 decided on 24th November, 2015.
3. The factual matrix leading to application are that, the present applicant, who is the original complainant, filed Regular Criminal Case No.305 of 2014 before Judicial Magistrate First Class, Shirur Kasar Dist. Beed contending that, the accused persons therein (in all seven in numbers) had committed offence punishable under Section 498-A, 307, 323, 504, 506 read with 34 of the Indian Penal Code.
4. After the presentation of the complaint, verification was recorded. After going through the verification and documents as well as hearing of the learned advocate appearing for the complainant, learned Magistrate Shirur Kasar passed an order of

issuing process against accused Nos.1 to 5 by order dated 12-09-2014. It will not be other place to mention here that, after the verification of the complainant, the complainant had examined witness by name Rajendra Sahebrao Ghule in order to corroborate her contentions.

5. Original accused Nos.4 and 5 challenged the order of issuance of process against them in Criminal Revision No.128 of 2014 before the Sessions Judge at Beed. By the impugned order the learned Sessions Judge allowed the revision petition and set aside the order of issuance of process against the original accused No.4 and 5. The main points of which the said order passed by the learned Judicial Magistrate First Class was set aside, were that accused No.4 and 5 were resident of Beed which was not within the jurisdiction of Judicial Magistrate F.C., Shirur Kasar, and therefore, the detailed investigation under Section 202 of Cr.P.C. ought to have been ordered. Further taking into consideration the fact that the offence that was alleged to have been committed was exclusively triable by the Court of Sessions, the proper procedure under Section 202 of Cr.P.C. ought to have been adhered to. The other point on which also the revision came to be allowed was that the complainant has not made out the prima facie case as against

accused No.4 and 5.

6. It has been submitted on behalf of the present applicant/ original complainant that, if the learned Sessions Judge was of the opinion that a detailed investigation or enquiry under Section 202 of Cr.P.C. was contemplated, then he ought to have remanded the matter for adhering to the provisions of the law by learned Judicial Magistrate F.C. The learned Sessions Judge erred in discharging the accused No.4 and 5. He relied on the decision in *National Bank of Oman Vs. Barakara Abdul Aziz and Another*, reported in (2013) 2 Supreme Court, 488, wherein it has been observed that,

"11. We are of the view that the High Court has correctly held that the above mentioned amendment was not noticed by the CJM, Ahmednagar. The CJM had failed to carry out any enquiry or order investigation as contemplated under the amended Section 202 CrPC. Since it is an admitted fact that the accused is residing outside the jurisdiction of the CJM, Ahmednagar, we find no error in the view taken by the High Court."

"12. All the same, the High Court instead of quashing the complaint, should have directed the Magistrate to pass fresh orders following the provisions of Section 202 CrPC."

The Hon'ble Supreme Court had remitted the matter to the Magistrate for passing fresh orders. He submitted that, the same approach is required to be taken in this case.

7. Per contra, it has been argued on behalf of the respondents No.2 and 3/ original accused No.4 and 5 that, the order passed by learned Sessions Judge, Beed does not suffer from any irregularity or illegality. It has been rightly held that, since the accused persons were not residing in the jurisdiction of the learned Magistrate, a detailed enquiry as contemplated under Section 202 of Cr.P.C. was required. So also the allegations in the complaint were vague as possible. No specific role has been attributed to accused No.4 and 5. The present application has been filed only to harass the respondents No.2 and 3 as they have filed Special Civil Suit No.62 of 2016 before Civil Court, Beed, claiming compensation for malicious prosecution.

8. The perusal of the complaint shows that, accused No.4 and 5 are shown to be resident of Sangalwadi u/v Raimoha Tq. Shirur Kasar Dist. Beed. It appears that, when the matter was at initial stage before J.M.F.C., Shirur Kasar, there was no evidence

before the learned Magistrate to show that accused No.4 and 5 were resident of place which was beyond the territorial jurisdiction of J.M.F.C., Shirur Kasar. Under such circumstance the question of enquiry or postponement of issuance of process as contemplated under Section 202 of Cr.P.C. when accused resides at a place beyond area, was not contemplated. It appears that, the said point was taken before the learned Sessions Judge by accused No.4 and 5 by giving their address of Anand Nagar, Beed Tq. and Dist. Beed. The learned Sessions Judge has not considered the fact that, there was no material before J.M.F.C., Shirur Kasar that accused No.4 and 5 were resident of any other place beyond his territorial jurisdiction. Whatever the documents, if any were produced by accused No.4 and 5 were before the revisional Court, under such circumstance that point ought not to have been dealt with in the said manner by the learned Sessions Judge.

9. Even if for the sake of arguments it is accepted that, it ought to have been considered by the learned Magistrate that the accused No.4 and 5 are not resident of his territorial jurisdiction, and therefore an enquiry ought to have been ordered before issuance of process, yet the order of discharge of accused No.4 and 5 by the learned Sessions Judge was uncalled for. In (2013) 2

Supreme Cases 488 (supra) Hon'ble Apex Court did not find any error in the view taken by the High Court that the Chief Judicial Magistrate, Ahmednagar had not carried any enquiry or order investigation under Section 202 of Cr.P.C. before issuing the process. Considering the fact that the respondent therein was resident of district Dakshin Kannada, Karnataka, which does not fall within the jurisdiction of Chief Judicial Magistrate, Ahmednagar, it was therefore incumbent upon him to carry out an enquiry or order investigation as contemplated under Section 202 of Cr.P.C. before issuing the process. Further this Court had quashed the complaint, and therefore Apex Court has observed that instead of quashing the complaint this Court should have direct the Magistrate to pass fresh orders by adopting appropriate procedure. Therefore, Apex Court remitted the case back. The same step is required to be taken in this case also.

10. It is also to be noted that complainant has alleged that accused have committed offence punishable under Section 307 of Indian Penal Code. The said offence is exclusively triable by Court of Sessions. Therefore, the learned Magistrate ought to have dealt with the matter with its seriousness. No doubt, complainant is not duty bound to examine all the witnesses cited though Section 202

of CrPC proviso uses word "shall", Magistrate was duty bound to call upon complainant to lead sufficient number of witnesses so as to form an opinion. In *Shivajee Singh Vs. Nagendra Tiwary and others* (2010) 7 SCC 578; after relying on *Rosy Vs. State of Kerala* (2000) 2 SCC 230, Apex Court has held that, "word 'all' appearing in Section 202 (2) proviso is qualified by word "his" which implies that complainant is not bound to examine all witnesses named in the complaint or whose names are disclosed in response to order passed by the Magistrate." Though the choice is given to the complainant, it was for the Magistrate to see whether the statements of the witness examined by complainant was sufficient to take cognizance of offence under Section 307 of IPC or not.

11. As regards the merit in the complaint are concerned, I would like to refrain from observing anything since I am remitting the matter back for adherence of the proper procedure. The learned counsel appearing for respondents No.2 and 3 had relied on, *Preeti Gupta and Another Vs. State of Jharkhand and Another*, reported in (2010) 7 Supreme Court Cases, 667 and *Geeta Mehrotra and Another Vs. State of Uttar Pradesh and Another*, reported in (2012) 10 Supreme Court 741. In both these cases Hon'ble Supreme Court has taken a note of the fact that, large

number of cases invoking distant relatives of the husband are filed and it has been observed that large number of such complaints are not even bonafide and filed with oblique motive. Thus the ratio laid down in these cases may be helpful to the respondents No.2 and 3 and they may be cited before the Magistrate at the appropriate stage if occasion arises.

12. Taking into consideration the above discussion, the order of discharge of the respondents No.2 and 3 (original accused No.4 and 5) passed by learned Sessions Judge, Beed in the revision deserves to be set aside and the matter deserves to be remitted back to the learned Magistrate for adhering the proper procedure. I, therefore, proceed to pass the following order.

ORDER

- 1) The application is hereby partly allowed.
- 2) The order of discharge of original accused No.4 and 5 in Regular Criminal Case No.305 of 2014 passed by Sessions Judge, Beed on 24-11-2015 in Criminal Revision Petition No.128 of 2014 is hereby set aside.
- 3) It is hereby clarified that the order of issuance of process in Regular Criminal Case No.305 of 2014

passed by Judicial Magistrate, First Class, Shirur Kasar Dist. Beed against the original accused No.4 and 5 passed by learned Sessions Judge in the aforesaid Criminal Revision is hereby maintained.

4) The matter is remitted back to Judicial Magistrate, First Class, Shirur Kasar Dist. Beed for passing fresh orders after adhering a proper procedure as contemplated under the provisions of Section 202 of Cr.P.C., in the light of above discussion.

5) The learned Magistrate to expedite the matter taking into consideration the fact that the complaint was filed in 2014.

6) The orders be passed uninfluenced by the prima facie conclusion reached by either Sessions Judge or this Court.

7) No order as to costs.

8) Writ petition accordingly stands disposed of.

**[SMT. VIBHA KANKANWADI]
JUDGE**

gawade/-.