

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

CRIMINAL WRIT PETITION NO. 618 OF 2006

Yasmin Akeel Pinjari,
Age 20 years, Occu. Nil,
R/o. Sonai, At present
R/o. Newasa (Kh.), Tq. Newasa,
Dist. Ahmednagar.

....Petitioner.

Versus

Mohd. Khabulal Pinjari,
Age 55 years, Occu. Labourer,
R/o. Dongrewadi, Tq. Washi,
Dist. Osmanabad.

....Respondent.

Mr. H.D. Deshmukh, Advocate for petitioner.

CORAM : T.V. NALAWADE, J.

DATED : 18th January, 2017.

ORAL JUDGMENT :

1) The proceeding is filed to challenge the order of issue process made in private complaint bearing R.C.C. No. 180/2006 by the Court of Judicial Magistrate, First Class, Kallamb, District Osmanabad. Heard the learned counsel for petitioner and the learned APP. The counsel for original complainant Shri. Magare did not turn up.

2) Only one point was argued by the learned counsel for petitioner. He submitted that the cognizance of the matter is taken by Kallamb Court from Osmanabad district without making

any enquiry under section 202 of Criminal Procedure Code as made necessary by amendment to section 202 which came in force from 24.6.2006.

3) This Court has gone through the copy of complaint. It shows that the matter is pending in Kallamb Court, but almost all the accused are residents of Ahmednagar district. Section 202 of Cr.P.C. runs as under :-

"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, and shall in a 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.-

(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 witnesses 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 Court on an officer in charge of a police station except the power to arrest without warrant."

In view of the provisions of section 202 of Cr.P.C., the J.M.F.C. was expected to postpone the order of issue process and make inquiry as provided in amended provision and then only to pass the order of issue process. That mandatory procedure is not followed by the learned J.M.F.C. and so, the order of issue process cannot sustain in law.

4) In the result, the petition is allowed. The order of issue process made by the learned J.M.F.C. is hereby set aside. Matter is remanded back to the Court of J.M.F.C. J.M.F.C. is to

follow the procedure given by the aforesaid amended provision of Cr.P.C. and then to pass further orders.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

SSC/