

(1)

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

CRIMINAL APPLICATION (APL) NO.639 OF 2015

1. Gitabai w/o Lakhpatiprashad
Mishra, Age; 62 years,
Occ: Kirana Shop
2. Devaprakash @ Dipak Lakhpatiprasad
Mishra, Age: 37 years,
Occ: Kabadi/Panshop,
3. Kailash s/o Lakhpatiprasad Mishra,
Age: 45 years, Occ: Kirana shop,
4. Mirabai @ Ratna d/o
Lakhpatiprasad Mishra,
Age: 42 years, Occ: Household,
5. Anju d/o Lakhpatiprasad Mishra,
Age: 32 years, Occ: Private,
6. Anjali d/o Lakhpatiprasad Mishra,
Age: 19 years, Occ: Job Work,
7. Akshay s/o Kailas Mishra,
Age: 22 years, Occ: Driver,

All R/o. D-47, Ambazari Hill
Top, Nagpur, Tahsil
& District Nagpur.

..APPLICANTS

VERSUS

Mrs. Jyoti w/o Sanjay Mishra,
Age: 25 years, Occ: Household,
R/o. C/o. Urmilabai Sharma,
Dongargaon, Tahsil & Dist. Gondia. ..RESPONDENT

Mr R.R. Vyas, Advocate for applicants;
Mr A.B. Choon, Advocate for respondent

(2)

CORAM : N.W. SAMBRE, J.**DATE : 22nd MARCH, 2017****ORAL ORDER :**

Mr. Vyas, learned Counsel for the applicants has rightly invited attention of this Court to the provisions of 200 and 202 of the Code of Criminal Procedure so as to infer that since the accused persons are not residing at the place where the complaint is registered, inquiry under Section 202 of the Code of Criminal Procedure was necessary.

2. Mr. Choon, learned Counsel for the respondent-original complainant submits that it is cause of non refund of *Stridhan*, ingredients of offence punishable under Section 406 (criminal breach of trust) of the Indian Penal Code were established, which form the basis for *prima facie* opinion of the Magistrate for issuance of process.

3. In the factual matrix, particularly the matter is arising out of matrimonial discord, least that was expected of the Magistrate to pass order

(3)

under Section 202 of the Code of Criminal Procedure calling report, when the accused were not residing within the jurisdiction where the complaint was initiated.

4. In view thereof, order passed by learned Judicial Magistrate, First Class (3rd Court), Gondia, below Exhibit-1 in Regular Criminal Case No. 222 of 2014, on 12th March, 2015 is not sustainable. As such, same is quashed and set aside. Regular Criminal Case No. 222 of 2014 stood restored to the file of learned Judicial Magistrate, First Class (3rd Court), Gondia, who shall pass fresh order in accordance with law.

5. Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

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