

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

CRIMINAL WRIT PETITION NO.1565 OF 2015

Shri. Motilal Khivraj Banthia,
Age : 56 years, Occu.: Business,
R/o 827, Mahatma Gandhi Road,
Panvel, Dist. Raigad.

... **Petitioner**

Versus

1. The State of Maharashtra,
Through Government Pleader,
2. Mahendra Madanlal Bamb,
Age : 45 years, Occu. : Business,
R/o 8, Ravindra Apartment,
Parvati, Pune – 411009.

... **Respondents**

...

Mr. S.B.Kadu, Advocate for Petitioner.
Mr. B.V.Virdhe, APP for Respondent-State.
Mr. S.S.Kulkarni, Advocate for Respondent No.2.

...

CORAM : MANGESH S. PATIL, J.

DATE : 02.08.2018

ORAL JUDGMENT :-

Rule. Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally.

2. By this Writ Petition under Article 227 of the Constitution of India and Section 482 of the Code of

Criminal Procedure, the petitioner who is an accused in RTC No.254 of 2010 registered with the Court of Judicial Magistrate First class, Kopargaon, District Ahmednagar is impugning the order passed by the Magistrate directing the process to be issued against him for the offences punishable under Sections 405 and 409 of IPC.

3. The learned advocate for the petitioner primarily submitted that the learned Magistrate has not followed the procedure prescribed under Section 202 while directing the process to be issued under Section 204 of the Cr.P.C. Since the petitioner was shown to be a resident of Panvel in the title of the complaint, the Magistrate ought to have deferred the process and ought to have directed an inquiry since the petitioner was residing beyond the jurisdiction of the learned Magistrate. The learned advocate in this respect sought to rely upon the decision of the Supreme Court in the case of ***National Bank of Oman Vs. Barakara Abdul Aziz ; (2013) 2 SCC 488.***

4. The learned advocate for the respondent vehemently submitted that the intention of carrying out amendment in Section 202 of Cr.P.C. in the year 2006 will have to be taken into consideration. Unless there is something to demonstrate that the complaint that was being lodged by the Respondent was false, the Magistrate need not have followed the procedure of directing an inquiry under Section 202. His satisfaction based on the material before him was sufficient to empower him to direct the process to be issued. Now quashing and setting aside the order and directing him to follow that procedure would be a mere formality. There was enough material before the Magistrate to form a satisfaction about commission of an offence alleged and no fault can be found in directing the process to be issued.

5. Obviously, whether there was enough material before the Magistrate or not need not be gone into in the present inquiry. Suffice for the purpose to note that the title of the criminal case clearly demonstrated the

address of the respondent of Panvel, District Raigad. The private complaint was filed before the Judicial Magistrate First Class at Kopargaon. By virtue of the amended provision of Section 202(1) of the Cr.P.C., since the petitioner even according to the respondent was a resident of Panvel where admittedly the jurisdiction of Judicial Magistrate First Class, Kopargaon did not extend upto, it was mandatory for the Magistrate to have first conducted the inquiry himself or should have directed an investigation to be made by a police officer. The use of the word 'shall' in that provision is conspicuous. It does not give any discretion to the Magistrate. Irrespective of the fact whether the contents of complaint are prima facie sufficient to establish an offence, whenever the proposed accused is resident of a place beyond the jurisdiction of the Magistrate, he has no other option but to direct further inquiry / investigation under Section 202. The provision being mandatory, the impugned order directing the process to be issued without following it goes to the root of the jurisdiction of the Magistrate in directing the process to

be issued. It is not an empty formality. Merits and substance in the complaint apart, whenever the accused is resident of a place beyond the jurisdiction of the Magistrate he has no jurisdiction to direct the process to be issued unless he directs an inquiry under Section 202 of the Cr.P.C. This is precisely what has been laid down by the Supreme Court in the case of National Bank of Oman (supra).

6. In view of such state of affairs, the impugned order is not sustainable in law and is liable to be quashed and set aside with a direction to the Magistrate to pass an appropriate order in the light of the observations made herein above.

7. The Writ Petition is partly allowed. The rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

...

vmk/-