

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

CRIMINAL APPLICATION NO. 370 OF 2019

Parshuram Satwaji Bidarkar

Age : 78 Yrs., Occ. Agril.,

R/o : Ramnagar, Dhorpura, **.... APPLICANT/**
Jalna, Taluka & Dist. Jalna. **[ORI. COMPLAINANT]**

V E R S U S

1. Ashok s/o Pralhad Jogdand
Age : 61 Yrs., Occ. Business.
2. Savita Ashok Jogdand
Age : 55 Yrs., Occ. Household.
3. Shubhangi Rajesh Sabane
Age : 27 Yrs., Occ. Household.
4. Sunita @ Sneha Ashok Jogdand
Age : 27 Yrs., Occ. Household.

All R/o : D-46, Room No. 9,
Sai Sargam Housing Society,
Sector – 48, Sewood (West), **RESPONDENTS/**
Navi Mumbai – 400 706. **[ORI. ACCUSED]**

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Mr. S.V.Suryawanshi, Advocate for Applicant.

Mr. P.P.Mandlik, Advocate for R – 1 to 4.

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CORAM : V.L.ACHLIYA, J.**DATE OF JUDGMENT : 24/06/2019**

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent, heard finally.

2. Heard learned counsel for applicant. Perused the order passed by Sessions Court.

3. The applicant/original complainant has filed this application u/s 482 of Cr.P.C. questioning the legality and validity of Judgment and order dated 28/11/2018 passed by learned Additional Sessions Judge, Jalna in Criminal Revision No. 78 of 2018.

4. In view of limited challenge raised in the application, it is not required to discuss the facts in detail. The complainant had filed private complaint u/s 323,504,506 r/w 34 of I.P.C. as against the respondents. The complaint was registered as S.C.C.

No. 509/2017. After recording the verification statement of complainant, learned J.M.F.C., Jalna passed order to issue process u/s 323,504,506 r/w 34 of I.P.C. as against the respondents. On receipt of summons, the respondents/accused preferred revision before the Sessions Court, Jalna. On due consideration of challenge raised in the revision petition, learned Additional Sessions Judge set aside the order of issuance of process after reaching to the conclusion that while passing the order, learned Magistrate has not followed the procedure as provided u/s 202 of Cr.P.C. It is observed that as the respondents/accused are residing beyond the territorial jurisdiction of learned Magistrate, it was incumbent upon the Magistrate to have conduct inquiry as contemplated u/s 202 of Cr.P.C. before passing the order. Without following procedure mandated under the law, the order was passed. On this conclusion, the revisional Court has allowed the revision petition and set aside the order passed by learned Magistrate. Being aggrieved the applicant/complainant has preferred this application

with limited challenge.

5. It is the contention of learned counsel for applicant/complainant that in view of the conclusion drawn by the revisional Court that order has been passed without following mandatory procedure prescribed u/s 202 of Cr.P.C., the revisional Court ought to have remanded the matter to trial Court for passing fresh orders after complying with the procedure as laid down u/s 202 of Cr.P.C. In support of the submission, learned counsel has referred and relied upon the decision of the Apex Court in the case of ***National Bank of Oman V/s Barakara Abdul Aziz (2013) 2 SCC 488.***

6. On the other hand, learned counsel for respondent Nos. 1 to 4 supported the order passed by the revisional Court. It is submitted that on account of matrimonial discord, the complainant has filed false complaint to harass the respondents. It is submitted that the applicant had filed complaint as a 'counter blast' to the complaint filed by Shubhangi, daughter-

in-law of the complainant. The respondents are resident of Navi Mumbai. In order to harass them, the complaint was filed in the Court of J.M.F.C. at Jalna. In that view, the revisional Court was justified in not remanding the case for fresh consideration.

7. The revisional Court has allowed the revision petition filed by the respondent/accused and passed the following order.

- "1. Revision Application is allowed.*
- 2. The order of issue process dated 06/12/2017 in S.C.C. No. 509/2017 passed by learned J.M.F.C. Court No. 4 is hereby quashed and set aside.*
- 3. Record and papers be remitted back to the learned trial Court.*
- 4. Pronounced in open Court."*

8. The revisional Court has set aside the impugned order on the ground that the procedure prescribed u/s 202 of Cr.P.C. was not followed before passing the impugned order. It is observed that as the accused are resident of New Mumbai i.e. beyond the

jurisdiction of learned Magistrate, the Magistrate ought to have followed the procedure prescribed u/s 202 of Cr.P.C. before issuing process. In that view, the order passed by the revisional Court is in consonance with law laid down by the Apex Court in the case of ***National Bank of Oman V/s Barakara Abdul Aziz [supra]*** and ***Birla Corporation Limited V/s Adventz Investments and Holdings Limited and Others reported in 2019 SCC On Line SC 682.***

9. It is apparent from the face of record that order of issuance of process has been passed only on the basis of averments made in the complaint and the verification statement of complainant recorded in the matter. It is admitted position that complaint was filed at Jalna and the accused are resident of New Mumbai i.e. beyond the territorial jurisdiction of Court at Jalna. In that view, it was incumbent upon the learned Magistrate to have enquired into the case himself or directed the investigation to be made by the 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 against the accused so as to issue process against the accused. In the instant case neither the inquiry was conducted by the learned Magistrate nor any direction was issued for conduct of investigation by the police officer. So also, no evidence of the witnesses on oath was recorded in the matter before passing the impugned order. In that view, the order passed by the learned Magistrate liable to be set aside being passed without following the mandate of law laid down u/s 202 of Cr.P.C.

10. In the case of ***National Bank of Oman V/s Barakara Abdul Aziz (2013) 2 SCC 488***, the Apex Court has observed in para No. 12 as under :

" 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 Cr.P.C. Hence, we remit the matter to the Magistrate for passing fresh orders uninfluenced by the prima facie conclusion reached by the High

Court that the bare allegations of cheating do not make out a case against the accused for issuance of process under section 418 or 420 I.P.C. The C.J.M. Will pass fresh orders after complying with the procedure laid down in Section 202 Cr.P.C., within two months from the date of receipt of this order. "

11. The decision in case of ***National Bank of Oman V/s Barakara Abdul Aziz [supra]*** squarely applicable to facts of the present case. While setting aside the order to issue process passed against the accused on the ground of non compliance of mandatory requirement of law i.e. to conduct inquiry, the revisional Court ought to have remitted the case back to trial Court to pass fresh order after complying with the procedure laid down u/s 202 of Cr.P.C. In that view, the order of revisional Court needs to be modified so as to remit the matter to the learned Magistrate for passing fresh order after complying with the procedure laid down u/s 202 of Cr.P.C. Accordingly, the application is partly allowed and

following order is passed.

ORDER

- [i] The application is partly allowed.
- [ii] The order passed by learned Additional Sessions Judge, Jalna is modified and substituted as under.
 - [a] The order of issuance of process dated 06/12/2017 passed by learned J.M.F.C. [Court No. 4], Jalna in S.C.C. No. 509/2017 is set aside. The case is remitted back to the trial Court for fresh consideration.

12. Rule is made absolute in above terms.

**[V.L.ACHLIYA]
JUDGE**

KNP.