

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

**CRIMINAL WRIT PETITION No.1241 of 2017**

- 1) Parth Bhadresh Mehta,  
Age 30 years,  
Occupation : Business  
R/o C/o Bhadresh Trading  
Corporation Ltd.,  
101-104, Tower-A,  
Peninsular Corporate Park,  
G.K. Kadam Marg,  
Lower Parel (West)  
Mumbai - 400 013.

And also residing at  
Shri. Parth Bhadresh Mehta  
R/o 402, Manju Veena Apartment,  
2/A, Narayan Dabholkar Road,  
Opp. Napeansea Road,  
Mumbai - 400 006.

- 2) Hiten Kantilal Shah  
Age 39 years,  
Occupation : Business  
R/o C/o Bhadresh Trading  
Corporation Ltd.,  
101-104, Tower-A,  
Peninsular Corporate Park,  
G.K. Kadam Marg,  
Lower Parel (West)  
Mumbai - 400 013.

And also residing at  
Shri. Hiten Kantilal Shah  
104A, Vishal Apartment,  
Agarkar Road, Dombiwali (East)  
Thane, Mumbai 421 201.

- 3) Vishal Laxmikant Thakkar  
Age 40 years,  
Occupation: Business

R/o C/o Bhadresh Trading  
Corporation Ltd.,  
101-104, Tower-A,  
Peninsular Corporate Park,  
G.K. Kadam Marg,  
Lower Parel (West)  
Mumbai - 400 013.

And also residing at  
Shri. Vishal Laxmikant Thakkar  
C/93, Venus Apartment,  
Near Prakash School, Vastrapur,  
Ahmedabad - 380 054. .. **Petitioners.**

**Versus**

- 1) The State of Maharashtra.
- 2) M/s. Motilal Manakchand,  
A Partnership firm having its  
registered office at 2270/72,  
Adat Bazar, Ahmednagar  
through its partner  
Shri Kishor Hastimal Munot,  
Age Major, Occupation: Business  
R/o "Chahul", Behind S.T. Stand,  
Station Road, Ahmednagar. .. **Respondents.**

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Shri. Abhay D. Ostwal, Advocate, for petitioners.

Shri. P.N. Kutty, Additional Public Prosecutor, for  
respondent No.1.

Shri. A.P. Bhandari, Advocate, for respondent No.2.

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**With**

**CRIMINAL WRIT PETITION No.1242 of 2017**

\* Parth Bhadresh Mehta,  
 Age 30 years,  
 Occupation : Business  
 R/o C/o Bhadresh Trading  
 Corporation Ltd.,  
 101-104, Tower-A,  
 Peninsular Corporate Park,  
 G.K. Kadam Marg, Lower Parel (West)  
 Mumbai - 400 013.

And also residing at  
 Shri. Parth Bhadresh Mehta  
 R/o 402, Manju Veena Apartment,  
 2/A, Narayan Dabholkar Road,  
 Opp. Napeansea Road,  
 Mumbai - 400 006.

**.. Petitioner.**

**Versus**

- 1) The State of Maharashtra.
- 2) M/s. Motilal Manakchand,  
 A Partnership firm having its  
 registered office at 2270/72,  
 Adat Bazar, Ahmednagar-414 001,  
 thorough its partner  
 Shri Kishor Hastimal Munot,  
 Age Major, Occupation: Business  
 R/o "Chahul", Behind S.T. Stand,  
 Station Road, Ahmednagar.

**.. Respondents.**

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Shri. Abhay D. Ostwal, Advocate, for petitioner.

Shri. R.B. Bagul, Additional Public Prosecutor, for  
 respondent No.1.

Shri. A.P. Bhandari, Advocate, for respondent No.2.

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**With**

**CRIMINAL WRIT PETITION No.1243 of 2017**

- 1) Parth Bhadresh Mehta,  
Age 30 years,  
Occupation : Business  
R/o C/o Bhadresh Trading  
Corporation Ltd.,  
101-104, Tower-A,  
Peninsular Corporate Park,  
G.K. Kadam Marg,  
Lower Parel (West)  
Mumbai - 400 013.

And also residing at  
Shri. Parth Bhadresh Mehta  
R/o 402, Manju Veena Apartment,  
2/A, Narayan Dabholkar Road,  
Opp. Napeansea Road,  
Mumbai - 400 006.

- 2) Hiten Kantilal Shah  
Age 39 years,  
Occupation : Business  
R/o C/o Bhadresh Trading  
Corporation Ltd.,  
101-104, Tower-A,  
Peninsular Corporate Park,  
G.K. Kadam Marg,  
Lower Parel (West)  
Mumbai - 400 013.

And also residing at  
Shri. Hiten Kantilal Shah  
104A, Vishal Apartment,  
Agarkar Road, Dombiwali (East)  
Thane, Mumbai 421 201.

- 3) Vishal Laxmikant Thakkar  
Age 40 years,  
Occupation: Business  
R/o C/o Bhadresh Trading

Corporation Ltd.,  
101-104, Tower-A,  
Peninsular Corporate Park,  
G.K. Kadam Marg,  
Lower Parel (West)  
Mumbai - 400 013.

And also residing at  
Shri. Vishal Laxmikant Thakkar  
C/93, Venus Apartment,  
Near Prakash School, Vastrapur,  
Ahmedabad - 380 054. .. **Petitioners.**

**Versus**

- 1) The State of Maharashtra.
- 2) M/s. Motilal Manakhand,  
A Partnership firm having its  
registered office at 2270/72,  
Adat Bazar, Ahmednagar  
thorough its partner  
Shri Kishor Hastimal Munot,  
Age Major, Occupation: Business  
R/o "Chahul", Behind S.T. Stand,  
Station Road, Ahmednagar. .. **Respondents.**

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Shri. Abhay D. Ostwal, Advocate, for petitioners.

Shri. S.N. Morampalle, Additional Public Prosecutor, for  
respondent No.1.

Shri. A.P. Bhandari, Advocate, for respondent No.2.

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**Coram: T.V. NALAWADE, J.**

**Date: 5 MARCH 2019**

**JUDGMENT:**

1) Rule. Rule made returnable forthwith. By consent, heard both sides for final disposal.

2) All the three proceedings are filed to challenge the orders of issue process made by learned Judicial Magistrate, First Class in private complaints filed for offence punishable under section 138 of the Negotiable Instruments Act, 1881. The decisions given by the learned Additional Sessions Judge in the revisions filed in two matters like Criminal Revision Application Nos.86/2017 and 87/2017 which were pending in the Court of the learned Additional Sessions Judge Ahmednagar, are also challenged. The revisions are dismissed by the Sessions Court.

3) The aforesaid relief is claimed on many grounds. One of the grounds is non compliance of the provision of section 202 of the Code of Criminal Procedure by the Judicial Magistrate, First Class before issuing process in all the three matters. The accused persons are

residents of Mumbai. This Court is deciding the writ petitions only on that ground and if the petitioners succeed in satisfying this Court that the said provision is mandatory in nature, there will be no need to consider other grounds of challenge. Both the sides placed reliance on many reported and un-reported cases decided by this Court, other High Courts and also by the Supreme Court.

4) The provision of section 202 of the Code of Criminal Procedure 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 Session; 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 Code on an officer in charge of a police station except the power to arrest without warrant."

5) In the aforesaid provision by way of amendment of 2005 it came to be provided that if the accused persons are residing at the place beyond the area in which the Magistrate exercises the jurisdiction, the Magistrate needs to postpone the issue process against the accused and follow the procedure given in section 202 of the Cr.P.C. In a matter like the present one, the Magistrate is expected to make inquiry into the case himself as per this provision. The "Notes on Clauses" given in Amendment Act 2005 mention as under :-

"False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall

enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

6) The aforesaid object behind introducing the amendment shows that when in the past there was discretion with the Magistrate either to make inquiry as mentioned in section 202 to ascertain that there are sufficient grounds for proceeding against the accused, by amendment, the aforesaid portion came to be added in the provision and that procedure needs to be followed when the accused persons are not the residents of the area in which the Magistrate is expected to exercise the jurisdiction. The scheme of Chapter XV of the Cr.P.C. shows that in a case like present one, after complying the provision of section 200 of Cr.P.C it is open to the Magistrate to pass order under section 203 of Cr.P.C. In the past also, there was the discretion to the Magistrate after following the procedure given in section 200 of Cr.P.C. either to postpone the issue of process in a case like present one as provided under section 202 of Cr.P.C. or to make order of issue process. These circumstances

need to be kept in mind for ascertaining as to whether the added portion of section 202 of Cr.P.C. is mandatory in nature. When the legislature takes such step, the Courts are expected to go with the presumption that there was specific intention of the legislature as mentioned in the object clause of the amendment and the Court is not expected to substitute its own intention with other interpretation. One more thing needs to be kept in mind that this procedure is a pre-trial procedure and so this provision cannot be connected with other objects like the object given in section 309 of the Cr.P.C. or in the scheme of the Negotiable Instruments Act, 1881 (particularly the provision of section 143(3) of this special enactment prescribing the period of six months for conclusion of the trial). The provision of section 143(3) is specifically made for trial of the cases and not for inquiry mentioned in section 202 of the Cr.P.C. It can be said that the Judicial Magistrate First Class is expected to deal with these matters by showing urgency even at pre-trial stage but on the basis of provision of section 143(3) inference is not possible that the said provision needs to be applied for ascertaining the intention behind the amendment of 2005.

Apparently the amended provision has added something in section 202 and that is the procedure which needs to be followed in such cases before 'issue process order' and that necessarily involves consumption of some time.

7) The learned counsel for the petitioners has placed reliance on many reported cases as under:

- (1) *2013 ALL MR (Cri) 3884 (Ganesh Sahakari Sakhar Karkhana Ltd. Vs. Bharat Trading Company).*
- (2) *2014 ALL MR (Cri) 2159 (Sattar Bhaimiya Mansuri Vs. Shabana Arif Mansuri).*
- (3) *2014 ALL MR (Cri) 1696 (Vimal Powerloom Vs. Ravi Agency).*
- (4) *Cri.W.P.121/2011 (M/s Vikrant Developers v. Rajendra Rajaram Basaiye) decided on 14th June 2013.*
- (5) *2013 ALL MR (Cri) 1377 (Netcore Solutions Pvt. Ltd. Vs. Pinnacle Teleservices Pvt. Ltd.).*
- (6) *2014 ALL MR (Cri) 1038 (EvGreen Machine Tool and Automation Pvt. Ltd. vs. Mayur Engineering Works).*
- (7) *2011 ALL MR (Cri) 3873 (Netcore Solutions Pvt. Ltd. Vs. Pinnacle Teleservices Pvt. Ltd.).*
- (8) *2008 ALL MR (Cri) 3360 (Kedar Kakodkar Vs. Auduth Timblo).*
- (9) *2007 ALL MR (Cri) 1339 (Maharaja Developers Vs. Udaysing Pratapsinghrao Bhonsle).*
- (10) *Cri. Application No.2640/2009 (Caption Mr. S.C. Mathur v. M/s Elektronik Lab) decided on 17-2-2010.*

- (11) *2012(3) Mh.L.J. 724 ((Netcore Solutions Pvt. Ltd. Vs. P.T. Pvt. Ltd.).*
- (12) *2017 (3) Mh.L.J. (Cri.) 599 (Shobhabai vs. State of Maharashtra).*
- (13) *2016(5) Mh.L.J.(Cri.) 347 (Harish vs. Kiranlata).*
- (14) *2018(3) Mh.L.J.(Cri.) 382 (Asma v. State of Maharashtra).*
- (15) *2018(5) Mh.L.J.(Cri.) 737) Sudhir vs. Jagdamba Public Trust).*
- (16) *2010 (3) Mh.L.J.(Cri.) 614 (Satish @ Rajendra v. state of Maharashtra).*
- (17) *2013(1) Mh.L.J.(Cri.) 301 (Barakara vs. National Bank of Oman).*
- (18) *2019 SCC OnLine Gau 17 (Kuljit Singh Sethi v. State of Assam).*
- (19) *S.K. Bhowmik v. S.K. Arora (Punjab & Haryana High Court) decided on 19-9-2007.*
- (20) *2011(6) Mh.L.J. 893 (Rajeev v. State Bank of Mauritius).*
- (21) *2011(4) Mh.L.J. 275 (ASR Systems v. K.C.H. Products).*
- (22) *2010 SCC OnLine Bom 924 (Neeta Mukesh Jain v. State of Maharashtra).*
- (23) *2016(5) Mh.L.J. 58 (Dr. Rajul vs. Reliance Capital Ltd.).*
- (24) *2007 SCC OnLine Bom 815 (Bimal Singh Kothari v. State of Goa).*
- (25) *(2000) 2 SCC 230 (Rosy v. State of Kerala).*
- (26) *(2009) 15 SCC 199 (K.T. Joseph v. State of Kerala).*
- (27) *(2012) 10 SCC 517 (Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel).*

- (28) *(2013) 2 SCC 488 (National Bank of Oman v. Barakara Abdul Aziz).*
- (29) *(2013) 2 SCC 435 (Udai Shankar Awasthi v. State of U.P.).*
- (30) *(2014) 14 SCC 638 (Vijay Dhanuka v. Najima Mamtaj).*
- (31) *(2017) 3 SCC 528 (Abhijit Pawar v. Hemant Madhukar Nimbalkar).*
- (32) *(2014) 2 SCC 62 (Sarah Mathew v. Institute of Cardio Vascular Diseases).*
- (33) *2003(4) Mh.L.J. 1056 (Michael Jackson vs. M.J.F.(India) Ltd.).*
- (34) *(1998) 5 SCC 749 (Pepsi Foods Ltd. v. Special Judicial Magistrate).*
- (35) *(2017) 5 SCC 725 (K. Sitaram v. CFL Capital Financial Service Ltd.).*
- (36) *(2015) 12 SCC 420 (Mehmood Ul Rehman v. Khazir Mohammad Tunda).*

Fairly, the learned counsel for the petitioners took this Court through the cases on which the learned counsel for the respondent, original complainant was expected to place reliance.

8) Most of the Hon'ble Judges of this Court till this date have held that the amended provision of section 202 of the Cr.P.C. is mandatory in nature. Recently one Hon'ble Judge of this Court took a different view and that case is reported as **2016 STPL 9087 Bombay (Dr. Rajul v.**

**Reliance Capital Limited and Others).** The learned Single Judge has considered the case of the Apex Court reported as **AIR 2014 SC (Cri) 1078 (Vijay Dhanuka v. Najima Mamtaj)** and the Full Bench decision of this Court reported as **2011(5) AIR Bombay Reporter 322 (Rajesh Chalke v. State of Maharashtra).** The provisions of sections 142, 143, 144, 146 etc, of the Negotiable Instruments Act are also considered. There are more observations and reasons at para 43 of the decision and that portion is as under :-

"43. The decisions in case of Bansilal (supra) and Vinod (2011 ACD 870 (Bom) (supra) holding that compliance with the provision of Section 138 of N.I. Act is only directory and not mandatory is in accordance with the scheme of the N.I. Act and the legislative intent that such complaints are disposed of in expeditious manner. It may be mentioned that the Apex Court in the case of National Insurance Co. Ltd. v. Saju P. Pual & Anr. [(2013) 2 SCC 41 : (AIR 2013 SC 1064)] has held that the pendency of the reference before a larger bench is no bar to follow the judgment under the reference. Therefore, following the view in the said case, the impugned order cannot be interfered with for the non-compliance of the provisions of Section 202 of Cr.P.C."

9) In the case of Rajesh Chalke (cited supra) the Full Bench of this Court interpreted the provision of section 145 of the Negotiable Instruments Act. Section 145 is as under :

**"145. Evidence on affidavit.--** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code."

The Full Bench considered the provision of section 146 of the Negotiable Instruments Act also and it provides as under :

**"146. Bank's slip prima facie evidence of certain facts.--** The Court shall, in respect of every proceeding under this Chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved."

10) It is laid down that the provisions of sections 145 and 146 are such that due to these provisions and particularly non obstante clause of section 145 this provision controls section 200 of Cr.P.C. and due to that the affidavits in evidence can be read even for the purpose of section 200 of Cr.P.C. In section 145 there are terms "inquiry and trial" and so it can be said that the evidence on affidavit can be used during inquiry which can be made under section 202 of Cr.P.C. This Court is not disputing that proposition as the provision itself is clear and the

intention behind that provision can be said to be to expedite the things. However, this Court cannot ignore the intention behind "inquiry" mentioned in section 202 of Cr.P.C. That power is given to the Judicial Magistrate First Class and even before amendment of 2005 he had a discretion to postpone the issue of process and make inquiry into the matter. As the purpose of inquiry is to ascertain as to whether prima facie case is made out for issue of process, the Magistrate can ascertain that the ingredients of the offences are made out and the Court has jurisdiction to take cognizance of the matter. As the learned Single Judge has made a mention of the amended provision with regard to local jurisdiction with relation to cause of action for section 138 case, this Court is observing that the inquiry is not only for the purpose of ascertaining as to whether the Magistrate has local/territorial jurisdiction but also to ascertain as to whether there is sufficient material to make out prima facie case for issue of process. Thus, the case of Chalke (supra) is not of that help to draw inference that on the basis of evidence, the statements made on affidavits as provided in aforesaid provision and which can be filed at the stage of

consideration of the matter under section 200 of Cr.P.C. the Magistrate can issue process. It can be said that section 200 is a first stage for consideration as to whether the allegations prima facie make out some offences of which the Magistrate can take cognizance. After consideration of the material which is made available under section 200 if the Magistrate thinks it fit to go for further inquiry as provided under section 202 of the Cr.P.C. it was open to the Magistrate in the past also, to postpone issue of process even after giving of the material by the complainant for the purpose of section 200 of Cr.P.C. and ask the complainant to give material for inquiry as provided in section 202 of the Cr.P.C. For this stage also the complainant can file affidavits as provided in section 145 but the Magistrate has a power to ask the complainant and the witnesses to remain present before him and make query by asking questions with regard to the material produced during this inquiry. This power is necessarily there with the Magistrate in view of the scheme of that Chapter. It cannot be said that the Magistrate must act on the basis of the evidence on affidavit and other material produced by the complainant

which can be done under sections 145 and 146 of the Negotiable Instruments Act. If that interpretation is done that will be against the intention of the legislature and in that case there will be possibility of issue of process against persons who may be innocent or who cannot be called by the Magistrate of that place for facing the trial. It is needless to mention that issuance of process in a criminal case is a serious matter, it is against the interests of the accused persons.

11) In the case of Vijay Dhanuka (cited supra) the Apex Court has considered the intention behind the amended section 202 of the Cr.P.C. vide Amendment Act No.25/2005 and it is held that it is mandatory in nature. In this case the Apex Court was interpreting the term "inquiry" used in section 202 of the Cr.P.C. and the difference between sections 200 and 202 of the Cr.P.C. is also given by the Apex Court. In that matter the Magistrate had examined the complainant on solemn affirmation and two witnesses were also examined and thereafter the Magistrate had directed issuance of process. The complaint was filed under section 138 of the

Negotiable Instruments Act. The Apex Court has observed that in view of the provision of section 2(g) of the Cr.P.C. inquiry mentioned in section 202 of the Cr.P.C. is not the trial but no specific mode or manner of inquiry is provided under section 202 of the Cr.P.C. There cannot be dispute over this proposition. This case does not say that for present matter the provision of section 202 of the Cr.P.C. is not mandatory in nature. As already mentioned what is important is the satisfaction of the Magistrate that there is sufficient material to make out prima facie case for issue process and for that purpose he is expected to make inquiry as per the amended provisions. It cannot be said that the provisions of section 145 or 146 of the Negotiable Instruments Act are inconsistent with the 'inquiry' mentioned in section 202 of the Cr.P.C. and so it is not necessary to ascertain as to whether they supersede or control the amended provision of section 202 of the Cr.P.C. These provisions can be used for inquiry mentioned in section 202 of Cr.P.C. If the interpretation as proposed by the learned counsel for the petitioners is made that will make the amended provision otiose. Further the scheme of the special enactment does not show that provision is

made for the procedure to be followed for taking cognizance of these matters except the provision of section 142 of the Negotiable Instruments Act. Learned counsel for the respondent placed reliance on some reported cases as under :-

- (1) *2010 STPL 16264 Bombay (Bansilal S Kabra v. Global Trade Finance Ltd.)*
- (2) *2011 STPL 14020 Bombay (Vinod v. SBI Global Factors Ltd.).*
- (3) *2011 STPL 5502 Bombay (Rajesh Chalke v. State of Maharashtra).*
- (4) *2011 STPL 32529 Bombay Netcore Solutions Pvt. ltd v. Pinnacle Teleservices Pvt. Ltd.).*
- (5) *2012 STPL 29923 SC (National Bank of Oman v. Barakar Abdul Aziz).*
- (6) *2014 STPL 7604 SC (Indian Bank Association v. Union of India).*
- (7) *2016 STPL 8310 SC (K.S. Joseph v. Philips Carbon Black Ltd.).*
- (8) *2014 STPL 2254 Bombay (Vimal Powerloom v. Ravi Agency).*
- (9) *2014 STPL 7084 SC (Vijay Dhanuka v. Najima Mamtaj).*
- (10) *2015 STPL 10536 SC (Bridgestone India Pvt. Ltd. v. Inderpal Singh).*
- (11) *2016 STPL 9087 Bombay (Dr. (Mrs.) Rajul Ketan Raj v. Reliance Capital Limited).*

(12) *2018 STPL 11033 Calcutta (S.S. Binu v. State of WB).*

(13) *2017 STPL 13206 SC (Meters and Instruments Pvt. Ltd. v. Kanchan Mehta).*

12) Relevant cases like case of **Vijay Dhanuka** of the Apex Court, case of **Rajesh Chalke** (Full Bench of this Court) and the case of **Rajul Raj** decided by the learned Single Judge of this Court are already mentioned and discussed by this Court. It is already mentioned that most of the Judges of this Court have held that the provision of section 202 is mandatory in nature and that needs to be followed even when the case is filed under section 138 of the Negotiable Instruments Act. For taking such view this Court has placed reliance on the cases reported as :

(i) *(2009) 15 SCC 199 (K.T. Josheph v. State of Kerala).*

(ii) *(2013) 2 SCC 489 (National Bank of Oman v. Barakar Abdul Aziz).*

(iii) *(2013) 2 SCC 435 (Udai Shankar Avasthi v. State of U.P.).*

This Court has considered the circumstance that the point is referred to larger bench and the matter is pending before the larger bench of the Apex Court and in view of these circumstances this Court has observed that there

are two options open for such cases viz. (1) to stay the proceeding and wait for the decision of the Apex Court in view of the aforesaid cases decided by the Apex Court; or, (2) direct the Magistrate to follow the mandatory provision of section 202 of Cr.P.C. In the present matter this Court holds that the second option needs to be used.

13) It appears that one matter is filed directly in this Court and no revision was filed. On the point of tenability of the present matter reliance can be placed on the case reported as **2009 ALL MR (Cri.) 234 (SC) Dhariwal Tobacco Products Ltd. v. State of Maharashtra**). In that case the Apex Court has discussed the provisions of section 482 and 397 of the Cr.P.C. and it is observed that when the proceeding is filed directly in High Court, proceeding cannot be dismissed only on the ground that alternative remedy of filing revision under section 397 is available. Thus the said matter also can be allowed by exercising jurisdiction under section 482 of the Cr.P.C. In the result, following order.

14) All the three writ petitions are allowed. The order of issue process passed by the learned Judicial Magistrate First Class Ahmednagar in Summary Criminal Case No.4226/2016, Summary Criminal Case No. 4227/2016 and Summary Criminal Case No.1927/2017 are hereby quashed and set aside. The decision given in Criminal Revision Application No.86/2017 in SCC No. 4226/2016 and Criminal Revision Application No. 87/2017 in SCC No.4227/2016 by the learned Sessions Court are also quashed and set aside. In all the three matters the learned Judicial Magistrate is expected to follow the procedure laid down in section 202 of the Code of Criminal Procedure as amended in 2005 for consideration of issue process. This is to be done within two months from the date of this decision. Rule is made absolute in above terms.

Sd/-  
**(T.V. NALAWADE, J.)**

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