

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 719 OF 2019

Harshad Valia	..Applicant.
Versus	
State of Maharashtra & anr.	..Respondents.

Mr. Aabad Ponda a/w. Harshil Parekh i/b. Purnanad & Company, Advocate for Applicant.

Mrs. P. P. Shinde, A.P.P. for State/Respondent No.1.

Mr. Hemang Jariwala i/b. Auroma Law, for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATED : 11th DECEMBER, 2019.

PC :

1. By this application, the applicant is seeking quashing and setting aside of the order dt.06/01/2016 passed by the learned Metropolitan Magistrate, 71st Court, Bandra, in C.C.No. 442/SW/2015.

2. Heard learned counsel for the applicant, as well as, for respondent No.2 who was the original complainant. The complaint was filed before the learned Metropolitan Magistrate at Bandra making various allegations against all the accused. The purported verification was recorded on 04/11/2015 and the impugned order was passed on 06/01/2016. The impugned order reads thus:

“Perused the contents of complaint,

documents accompanying it and verification statement of the complainant which sufficiently disclose commission of offence by accused Nos.1 to 4 under sections 406, 418, 420 r/w. 34 of The Indian Penal Code. Hence, issue process against accused Nos.1 to 4 under section 406, 418, 420 r/w. 34 of the Indian Penal Code on process fee returnable on 08.06.2016.”

3. The impugned order makes reference to the contents of complaint, documents accompanying it and verification statement of the complainant. The learned counsel for the applicant submitted that the verification was not recorded by the learned Magistrate in consonance of the requirement of Section 200 of the Code of Criminal Procedure (for short ‘Cr.p.c.’), but a typed copy was tendered before him and it was merely endorsed by the learned Magistrate. The verification is dated 04/11/2015. This factual aspect is fairly not disputed by the learned counsel for the respondent No.2.

4. Shri. Ponda, learned counsel for the applicant relied on the Judgment of this Court, passed in ***Criminal Writ Petition No. 2264 of 2008 in the case of Harish Khushalchand Chandak Vs. The State of Maharashtra & anr.*** In particular, he relied on para 4 and 5 of the said Judgment. Those

paragraphs read thus:

“4. The law does not require a private complaint to be affirmed on oath. It is repeatedly held by the Apex Court that issuing process on a private complaint is a very serious matter. Before drastic step of issuing process is taken, the law provides for a safeguard in the form of examination of the complainant on oath under section 200 of the said Code. The very object of examination of the complainant under section 200 is to ascertain the truth from the complainant by questioning him on oath. It is the requirement of section 200 that the Court must examine the complainant on oath and record substance of such examination in writing. The object of section 200 is to ascertain whether the version of the complainant is truthful. In the present case, it appears that the first respondent- complainant himself drafted an affidavit which was affirmed before the Assistant Superintendent of the Trial Court. On such affidavit there is an endorsement made by the learned Magistrate "Before me". Section 200 of the said Code does not permit examination of the complainant by the learned Magistrate on affidavit. Therefore, by no stretch of imagination the alleged verification of the first respondent in the form of an affidavit can be treated as an examination of the complainant within the meaning of section 200 of the said Code. Unless an examination of the complainant is made under section 200 of the said Code, the learned Magistrate cannot proceed to exercise powers under sections 202 or 203 or 204 of the

said Code. Hence, the order of process issued on the basis of such purported verification is illegal and is required to be set aside.

5. At the same time it will have to be borne in mind that if the learned Magistrate did not perform his obligation under section 200 of the said Code, the second respondent- complainant cannot be blamed and he cannot be made to suffer on account of default on the part of learned Magistrate. Therefore, though a case is made out for setting aside the order of issue of process, a direction will have to be given to the learned Magistrate to proceed with the complaint from the stage of examination under section 200 of the said Code.”

5. The observations in this Judgment are clearly applicable to the facts of the instant case and, therefore, the same will have to be applied in the present case, as well.

6. Hence, the following order.

a) The impugned order dated 06/01/2016 is set aside.

b) The Learned Magistrate is directed to record the examination of the complainant in terms of Section 200 of the Code of Criminal Procedure.

c) After complying with the provisions of S.200 of the Cr.p.c., the Learned Magistrate shall proceed to pass

appropriate orders on the complaint.

d) All contentions of the parties on merits of the matter are kept open.

e) The Criminal Application is partly allowed in the aforesaid terms.

(SARANG V. KOTWAL, J.)
