

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

CRIMINAL APPLICATION NO. 1066 OF 2019

Shirish Dhalichand Oswal

...Applicant

Versus

Shri Balasaheb Nivrutti Chavan & Ors.

...Respondents

Mr. A.V. Borwankar for Applicant.

Mr. A.R. Patil, APP for Respondent – State.

CORAM : S.S. SHINDE, J.

DATE : 20th SEPTEMBER 2019

PER COURT:

1. At the outset, learned counsel for the Applicant on instructions does not press the prayer to quash and set aside the order dated 20th March 2018 (Exhibit-H) passed by learned JMFC, Wadgaon, District-Kolhapur in RCC No. 32/2005. Learned counsel submits that, this application is confined to the challenge to the order of issuance of process dated 4th April 2005 (Exhibit-B) of the compilation of present application.

2. Learned counsel appearing for the Applicant relying upon the judgment of Hon'ble Supreme Court in the case of Aroon Purie Versus Jayakumar Hiremath, Criminal Appeal No. 843 of 2016 decided on 5th September 2016 submits that, learned Magistrate while issuing process to

the Applicant has not followed the mandate of Section 202 of Code of Criminal Procedure (for short “Cr.P.C.”). It was obligatory on the learned Magistrate to follow the mandate of Section 202 of Cr.P.C., since at the relevant time the Applicant was residing at Pune and the complaint was filed at Peth Wadgaon, Dist. Kolhapur. Therefore, according to learned counsel for the Applicant, since the Applicant was residing outside the jurisdiction of the learned Magistrate who has issued process, it was incumbent upon the learned Magistrate to follow the mandate of Section 202 of Cr.P.C. and since the said mandate has not followed, this application deserves consideration. However, learned counsel for the Applicant concedes to the position that the order of issuance of process, which is impugned in the present application was challenged before the High Court by way of filing Criminal Application No. 329 of 2011 (Mr. Shirish Oswal Vs. Dhanchandra Anna Khichade & Ors) alongwith Criminal Application No. 330 of 2011 (Mr Shirish Oswal Vs. Balasaheb Nivrutti Chavan & Ors), and said applications were rejected by order dated 16/8/2011.

3. Heard learned counsel appearing for the Applicant. The order impugned in this application is passed by learned Magistrate on 4th April 2005. Thereafter, the Applicant also filed the application for discharge and said application has been rejected by the learned Magistrate, observing that, said application is premature. Secondly, already the order impugned in this

petition was subject matter of Criminal Application No. 329 of 2011 (Mr. Shirish Oswal Vs. Dhanchandra Anna Khichade & Ors) alongwith Criminal Application No. 330 of 2011 (Mr Shirish Oswal Vs. Balasaheb Nivrutti Chavan & Ors) filed in the High Court and since those applications have been rejected, an entertaining this application would amount to seeking review of the order passed by this Court (Coram:K.U. Chandiwal, J.). Therefore, for two reasons, firstly there is an inordinate delay in challenging the order of issuance of process, and secondly having been challenged the impugned order by way of filing Criminal Application No. 329 of 2011 (Mr. Shirish Oswal Vs. Dhanchandra Anna Khichade & Ors) alongwith Criminal Application No. 330 of 2011 (Mr Shirish Oswal Vs. Balasaheb Nivrutti Chavan & Ors) before this Court, and said applications has been rejected, this Court is not inclined to entertain this application. Hence, application stands rejected.

[S.S. SHINDE, J.]