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criapln3410.19

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**906 CRIMINAL APPLICATION NO.3410 OF 2019**

**DATTATRAYA S/O. MAHIPATRAO KULKARNI AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA AND ANR**

Mr. Abhishek Kulkarni, Advocate for the applicants  
Mr. S. P. Sonpawale, APP for the respondent/State  
Mr. A. A. Pimpalwadkar, Advocate for the respondent  
No.2

**CORAM : N. R. BORKAR, J.**

**DATE : 07-12-2021**

**P. C.**

. This application under Section 482 of Code of Criminal Procedure takes an exception to the orders dated 22-02-2019 and 28-03-2019 passed by the learned Magistrate in SCC No. 248 of 2019.

2. The respondent No.2 herein had filed the complaint case against the present applicants for the offences punishable under Sections 323, 504 and 506 read with Section 34 of the Indian Penal Code. By order dated 22-02-2019 the learned Magistrate had issued the process against the present applicants for the offences punishable under Sections 323 and

506 read with Section 34 of the IPC and refused to issue process for the offence punishable under Section 504 of the IPC. The learned Magistrate however, again by order dated 28-03-2019 had issued the process against the present petitioner for the offences punishable under Sections 323,504, 506 read with Section 34 of the IPC. Both these orders are impugned in the present application.

3. I have heard the learned counsel for the applicant, learned APP for the respondent/State and the learned counsel for the respondent No.2.

4. The learned counsel for the applicants submits that the applicants are residing beyond the territorial jurisdiction of the court of learned Magistrate, who took cognizance of the complaint filed by the respondent No.2 and issued the process against the applicants. It is submitted that in such circumstances the learned Magistrate before issuing the process ought to have himself conducted inquiry or directed investigation in terms of Section 202 of the Code of Criminal Procedure. It is submitted that the orders impugned, thus need to be quashed and set aside. In support of the submission the learned

counsel for the applicants has relied upon the judgment of this court in the case of Motilal Khivraj Banthia Vs State of Maharashtra and another reported in 2020 ALL MR (Cri) 3839.

5. On the other hand learned counsel for the respondent No.2 supported the orders impugned.

6. The learned counsel for the respondent No.2 has however, not disputed that the applicants are residing beyond the territorial jurisdiction of the court of learned Magistrate, which took cognizance of the complaint filed by the respondent No.2 and issued process. It is also not disputed that before issuance of process the learned Magistrate, has neither conducted inquiry nor directed investigation in terms of section 202 of the Code of Criminal Procedure.

7. This court in case of Motilal Khivraj Banthia (supra) has held in para 5 as under:-

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 Kopergaon. 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, Kopergaon 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 the 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).

8. The orders impugned thus cannot be sustained and they are quashed and set aside. Learned Magistrate shall either inquire into the case himself or direct investigation in terms of section 202 of the Cr. P.C. and then shall pass the appropriate order in accordance with law.

9. Initially the learned Magistrate by order dated 22-02-2019, refused to issue process for the offence punishable under Section 504 of the IPC and the process was issued for the offence punishable under Section 323 and 506 of the IPC. However, by subsequent order dated 28-03-2019 again fresh order of issuance of process was passed and even the process for the offence punishable under Section 504 alongwith Sections 323 and 506 of IPC was issued. Thus the report from the learned Magistrate was called as to what prompted him to pass two orders of issuance of process. The learned Magistrate accordingly submitted the report. The learned

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Magistrate has submitted that the said error occurred due to re-registration of matter. The learned Registrar (Judicial) shall forward the letter of the learned Magistrate to the Registrar (Inspection) who shall issue necessary instructions to the learned Magistrate, in relation to registration of the matters, if required. The criminal application is disposed of.

[ N. R. BORKAR, J. ]

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