

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.321 OF 2018

Viral s/o Prafulbhai Sanghvi,
Aged about 37 years,
Occupation: Business,
Partner of M/s. Viral Enterprises,
Yusuf Mehar Ali Road,
Mumbai-400003.

..... **PETITIONER**

...V E R S U S...

1. State of Maharashtra through
P.S. Kamptee, Nagpur.
2. Rakesh s/o Rameshkumar Hotchandani,
Aged about 44 years, Occupation: Business,
Prop: of M/s R.K. Industries,
Behind L.R. Polymers, Gut No. 156/2-B,
Village Lhigaon, Taluqa Kamptee,
Dist. Nagpur 441202.

..... **RESPONDENTS**

Mr. Amol Jaltare, Advocate for Petitioner.
Mr. N.R. Rode, APP for Respondent 1/State.
Mr. S.D. Kalyani, Advocate for Respondent 2.

CORAM: **ROHIT B. DEO, J.**
DATE: **4th FEBRUARY, 2021.**

ORAL JUDGMENT:

The petitioner is seeking quashment of the order dated 12.02.2018 rendered by the Additional Sessions Judge-6, Nagpur in Criminal Revision Application 206 of 2017 whereby the

revision is dismissed and the order of issuance of process dated 18.06.2016 rendered by the Judicial Magistrate First Class, Kamptee in Regular Criminal Complaint 59 of 2015 is upheld.

2. Mr. Amol Jaltare canvassed several submissions, *inter alia*, that on the face of the averments in the complaint, no offence is made out and therefore, the order of issuance of process under Section 420 of Indian Penal Code is vitiated by jurisdictional error.

3. It is not necessary to record any decisive observation on the submission that the complaint does not disclose the ingredients of offence punishable under Section 420 of IPC.

4. In my considered view, the order of issuance of process is liable to be quashed on the short ground that the learned Magistrate committed an error in not conducting the inquiry envisaged under Section 202 (1) Criminal Procedure Code, 1973 (Code).

5. It is indubitable that the petitioner – accused resided and reside beyond the territorial jurisdiction of the learned

Magistrate. Sub-section (1) of Section 202 therefore, clearly comes into play. I have perused the record of the trial court and it is irrefutable that the learned Magistrate did not inquire nor caused an inquiry to be done before issuing process.

6. The law is too well settled to make a reference to the plethora of decision holding the field. Suffice it to refer to the decision of *Birla Corporation Limited v. Adventz Investments And Holdings Limited And Others* (2019) 16 SCC 610.

7. The order of issuance of process dated 18.06.2016 rendered by the Judicial Magistrate First Class, Kamptee is quashed.

8. The matter is remitted to the learned Magistrate for fresh consideration and decision, after complying with the provisions of Section 202 (1) of the Code.

9. Rule is made absolute in the afore-stated terms.

JUDGE