

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

CRIMINAL APPLICATION NO.1720 OF 2021

Kisan s/o. Namdev Mudal
and ors.

..Applicants

Vs.

The State of Maharashtra
and ors.

..Respondents

Mr.Y.K.Bobade, Advocate for applicants
Mr.S.P.Sonpavale, APP for respondent no.1
Mr.V.V.Tarde, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
DATE : MARCH 24, 2022**

ORDER :-

Heard learned counsel for the parties.

2. The challenge in this application is to the order dated 11.09.2019 of issuance of process against the applicants herein for the offences punishable under Sections 323 and 506 read with Section 34 of Indian Penal Code.

3. Learned counsel for the applicants would submit that learned Magistrate did not hold enquiry under Section 202 of the Code of Criminal Procedure since the applicants have been residing 200

kms. away from the jurisdictional place of the trial Court. He would further submit that applicants – Sakarabai and Lahu were indoor patients at Primary Health Centre, Talwada. He has placed on record the medical papers in this regard. He would further submit that as applicant - Sitaram has been serving with M.S.E.D.C.L. at Sinnar, his muster roll has been placed on record to indicate his presence on duty on the given date.

4. Learned counsel for the respondent-complainant would, on the other hand, submit that the complainant and a witness have been examined on oath. They have implicated all the applicants in the alleged offence. Entire factual matrix need to be gone into by learned Magistrate. Learned counsel would submit that the time of the incident is little past 8:00 p.m. The distance between Sinnar and the place of the incident is not more than 60 kms. The working hours of applicant - Sitaram must have been over by 6:00 p.m. He meant to say that if it is the defence of alibi, same must be made out in the trial of the case.

5. It appears that applicants - Sakarabi and Lahu were shown to have been indoor patients at the Primary Health Centre, Talwada. The medical papers (public documents) have been placed

on record. In view of the same, present application partly succeeds in terms of the following order:-

(i) The order impugned herein is set aside as against the applicants – Sakarabi and Lahu.

(ii) The order impugned herein is also set aside by remanding the matter back to the trial Court with a direction to comply with the mandate of Section 202 of the Code of Criminal Procedure and then proceed.

(iii) The application stands disposed of accordingly.

[R.G. AVACHAT, J.]

KBP