

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

929 CRIMINAL APPLICATION NO.3355 OF 2019

**MEERA W/O. NITIN SHINDE
VERSUS
SHRI. AMBIKA PRINTERS AND PUBLICATIONS, AURANGABAD,
THROUGH SHRIDHAR S/O. SHAMRAO PATKI**

Mr. Mayur G. Deokate, Advocate for the applicant
Mr. V. S. Kadam, Advocate for the respondent

CORAM : KISHORE C. SANT, J.

DATE : 21st DECEMBER, 2022

P. C.

1. Heard the learned advocates for the respective parties.

2. In the petition a challenge is to an order dated 05-02-2019, passed by the JMFC, Aurangabad issuing process under Section 204 of the Cr. P. C. for the offence punishable under Section 138 of the Negotiable Instruments Act. Main ground of challenge is that accused is residing beyond local jurisdiction of the court and therefore it was necessary to postpone the issuance of process and to conduct an enquiry under Section 202 of the Code of Criminal Procedure. The learned advocate for the applicant has relied upon the judgment passed by the Hon'ble Apex Court in Suo Motu Writ Petition

(Cri) No. 2/2020 wherein the Hon'ble Apex court has specifically held that an enquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at a sufficient grounds to proceed against accused, when such accused resides beyond territorial jurisdiction of the court. Further reliance is placed upon the judgment reported in 2019 SCC OnLine Bombay 405 in the case of Parth Bhadresh Mehta and others Vs State of Maharashtra and another. This court has also held that it is necessary to conduct an enquiry under Section 202 of the Act when the accused is residing beyond territorial jurisdiction of the court.

3. Learned advocate for the respondent submits that manner of enquiry is not clearly stated in the section. In the present case it is clear from the order passed by the learned Magistrate that the court has satisfied itself about the genuineness of the complaint. The complainant has also produced affidavit in support of his complaint. Documents are also on record. Learned JMFC, thus only after considering the above material has issued the process order after getting himself satisfied. In a way it is to be treated as enquiry under Section 202 of the Act.

4. It is true that though in Section 202 an enquiry is contemplated, when the accused is residing beyond territorial jurisdiction of the court, manner of enquiry is not given in this

section. In this case, enquiry needs only to ascertain genuineness and existence of a case against the accused. This being a case under Section 138 and there is also documents in the nature of notice of demand, bank memo etc. In this case affidavit in support of complainant is also filed. Thus, it can be said that there is sufficient material to satisfy the court about the existence of genuineness of the complaint and hence, the court has passed the order. This court does not find any illegality or perversity in the order passed by the learned JMFC of issuing process.

5. Considering the above, this court finds that no case is made for interference in the order impugned in the criminal application and same is dismissed and disposed off as such.

6. The trial court is requested to expedite the trial and to decide the matter as far as possible within a period of 6 months.

[KISHORE C. SANT, J.]

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