

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 8 OF 2022**

Manmohan Singh Thr. Its POA Harsh Vardhan
Garg & 3 Ors. ... Petitioners

Versus

State of Goa, Thr. Public Prosecutor & 11 Ors. ... Respondents

**Mr. Gauravvardhan A. S. Nadkarni, Advocate for the
Petitioners.**

**Mr. S. G. Bhobe, Public Prosecutor for the Respondent nos. 1
and 2-State.**

**CORAM: MANISH PITALE, J
DATED: 7th March 2022**

ORAL ORDER

1. By this Petition, the Petitioners have challenged Order dated 20.09.2021, passed by the Court of Additional Sessions Judge, Panaji, (herein after referred to as the *Sessions Court*), whereby cognizance has been taken and summons have been issued against the Petitioners under Section 27 of the Drugs and Cosmetics Act, 1940.

2. In the present case, a complaint was filed before the Court against the Petitioners and other persons alleging offences under Sections 18(a)(i), 18(c), 16(1)(a) read with Rules 124-b, Sections 27(b)(ii), 27(c), 27(d) and 28 of the aforesaid Act.

3. The principal grievance of the Petitioners is that the impugned Order is in the teeth of settled position of law inasmuch as there is no discussion in the order indicating as to on what basis the Sessions

Court thought it fit to issue summons to the Petitioners. It is also submitted that although the Petitioners are all residents of a place beyond the jurisdiction of the Court, mandatory inquiry under Section 202 of the Criminal Procedure Code (Cr.P.C.) was not conducted.

4. Mr. Gauravvardhan, learned Counsel appearing for the Petitioners, supported the aforesaid two grounds raised in the present Petition to challenge the impugned Order, by relying upon the Judgments of the Hon'ble Supreme Court in the case of *Vijay Dhanuka Etc vs Najima Mamtaj Etc*¹ and *Mehmood Ul Rehman vs. Khazir Mohammad Tunda & Ors.*²

5. Mr. S. G. Bhobe, learned Public Prosecutor appearing for the Respondent nos. 1 and 2, submitted that on merits he would have a lot to submit as regards the allegations made against the Petitioners but, the position of law as laid down in the aforesaid Judgments of the Supreme Court, could not be disputed.

6. A perusal of the aforesaid Judgments on which the learned Counsel appearing for the Petitioners has placed reliance, shows that as per the law laid down by the Supreme Court in the case of *Vijay Dhanuka Etc vs Najima Mamtaj Etc*. (supra), it has been held that in a case where the accused is residing in a place beyond the area in which the concerned Court is exercising jurisdiction, an inquiry as contemplated under Section 202 of the Cr.P.C. is mandatory. In the present case, there is nothing to show that such an inquiry was conducted before issuance of summons to the Petitioners, despite the

¹ 2014(14) SCC 638

² (2015) 12 SCC 420

fact that, admittedly, the Petitioners are residents of a place beyond the jurisdiction of the concerned Court.

7. In the case of *Mehmood Ul Rehman vs. Khazir Mohammad Tunda & Ors.* (supra), the Supreme Court has reiterated the position of law that while taking cognizance of a complaint and issuing summons/process, the concerned Court is not to do so as a matter of course and that a speaking order is expected. It is also clarified that the Court is not just a post office in such matters and that application of mind should be evident from the order issuing summons/process.

8. In the present case, the impugned Order reads as follows :

“ORDER

*Received the complaint and the documents
on record and heard ld. P. P. Shri R. D'Souza*

Cognizance taken

*Issue S/s to the accused u/s 27 of the Drugs
of Cosmetics Act, 1940*

*Sd/-
20/09/2021
A.S.J., Panaji”*

9. A perusal of the above quoted Order clearly shows that the concerned Court has issued summons without recording any reasons even briefly to indicate application of mind for issuance of summons/process.

10. Hence, on the aforesaid two grounds, the Petitioners have made out a case for interference.

11. Consequently, the Petition is allowed. The impugned Order is quashed and set aside, *qua* the Petitioners before this Court.

12. The matter is remanded to the aforesaid Court for taking appropriate steps in accordance with law.

MANISH PITALE, J