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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3563 OF 2021

Patel Developers & Anr.

...Petitioners

V/s.

State of Maharashtra & Ors.

...Respondents

\*\*\*\*\*

Mr. Jatin P. Shah a/w Mr. Girish Kedia, Ms. Snehankita Munj, Ms. Shraddha Kamble for Petitioners.

Ms. Asmita Rajbhar i/by Upshot Legal for Respondent Nos.2 and 3.

Mr. A. R. Patil, APP for Respondent No.1 (State).

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CORAM : AMIT BORKAR, J.

DATE : OCTOBER 6, 2022

P.C.:

**1.** Rule, rule made returnable forthwith.

**2.** *The petitioners inter alia* urged in the Petition is the lack of procedure mandatorily required under Section 202 of the Code of Criminal Procedure, 1973, mainly either examination of a witness or their affidavit of evidence before issuance of the process having not been complied with, though accused are residing outside territorial limits.

**3.** The learned advocate for the petitioner relied on the Constitution Bench Judgment of Apex Court in the expeditious trial of cases under Section 138 of the Negotiable Instruments Act, 1881, **Suo Motu Writ Petition (Crl.) No.2/2020 reported in 2021 ALL MR (Cri) 2641 (S.C.)**. In paragraph 16 of the Petition, the petitioner stated that the Learned Magistrate had failed to hold an inquiry under Section 202 of the Code of Criminal Procedure, 1973. He has invited my attention to the Roznama, which demonstrates that no affidavit of witnesses has been filed before passing the order of issuance of the process, nor the complainant or his witnesses had been examined by the Learned Magistrate before the issuance of process.

**4.** The record discloses that this Court issued notice to respondents on 11th January 2022. Respondents Nos. 2 and 3 appeared before this Court through the Advocate in pursuance of the said notice. The record also discloses that, thereafter, on 21<sup>st</sup> July 2022, 24<sup>th</sup> August 2022 and 4<sup>th</sup> October 2022, the advocate for the respondent Nos.2 and 3 failed to remain present. Accordingly, the matter was heard on 4<sup>th</sup> October 2022, and to give the last opportunity to the Advocate for Respondent No.2, it was

adjourned for today. In the morning session, the advocate for the respondent was present, and at her instance, the matter was kept at 2.30 p.m. At 2.30 p.m., the advocate for the respondent is absent; therefore, the Writ Petition is decided on merits.

**5.** From the clause title of the complaint, it appears that the accused resides outside the Magistrate's territorial limits. In view of the Judgment of the Apex Court in the case of **the expeditious trial of cases under Section 138 of the Negotiable Instrument Act, 1881** (Supra), it is mandatory for the Magistrate to hold an inquiry under Section 202 of Cr. P.C . The issue involved in the Petition being no longer res-integra, the Petition can be allowed on this limited point of absence of inquiry under Section 202 of the Code of Criminal Procedure, 1973.

**6.** For the reasons stated above, I pass the following order:-

- (i). The impugned order dated 14<sup>th</sup> February 2018, passed by the Judicial Magistrate, 2<sup>nd</sup> Court, Palghar in SCC No.39 of 2018, is quashed and set aside.

(ii). The learned Magistrate shall proceed in accordance with the law. Rule is made absolute in the above terms.

**(AMIT BORKAR, J.)**

(The order is modified as per order dated 20<sup>th</sup> October, 2022. The corrections in the 1<sup>st</sup> line in paragraph 2 of the order are shown in italics).