

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2129 OF 2022

Nitin N. Sawant

...Petitioner

Versus

The State of Maharashtra

...Respondent

....

Mr. Rajendra Sorankar i/by Ketan Dabke, Advocate for the
Petitioner.

Mr. Arfan Sait, APP for the Respondent – State.

Mr. Suresh K.P., PSI, MIDC, Police Station.

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CORAM : PRAKASH D. NAIK, J.

DATE : 6th JULY 2022.

PC :

1. The Petitioner is original complainant in private complaint No. 159/SW/2020 filed before the learned Metropolitan Magistrate, 22nd Court, Andheri, Mumbai on 24th February 2020.

2. The Petitioner has challenged the order dated 1st January 2022 passed by learned Metropolitan Magistrate, directing the petitioner to record the verification statement under Section 200 of Cr.PC.

3. The Petitioner filed the complaint on 24th February 2020 alleging offences under Sections 415, 417, 420, 378, 379, 506, 507 read with 34 and 120-B of the Indian Penal Code. The verification statement of the Petitioner/ complainant was recorded on 7th March

2020 and the case was adjourned to 9th April 2020. Vide order dated 13th October 2020, the learned Magistrate directed that inquiry under section 202 of Cr.P.C. be conducted by Senior Police Inspector, MIDC Police Station. While passing the said order it was observed that, the proposed accused are residents of a place beyond the jurisdiction of the Court and therefore it is very essential to refer the matter for inquiry under Section 202 (1) of Cr.P.C. The report was made returnable on 14th December 2020. The case was then listed before another Court of learned Magistrate on 1st January 2022. The learned Magistrate passed an order observing that, while arguments were advanced the Court found that the verification statement is tendered before the Court and in the opinion of the Court the modus operandi of recording the verification of the complainant is not as per law and the examination of the complainant and his witnesses must be done by the Court and the substance of such examination should be reduced to writing and also by the Magistrate. Such procedure has not been done in this particular case and this Court is not satisfied that proper procedure is applied. However, the Advocate for the complainant argued that, the Court cannot go back now. However in the opinion of the Court for making further enquiry under Section 202 (2) of Cr.P.C. Despite the report of the Investigating Officer, this Court is of the opinion that it can record

the statement of the complainant and its witnesses as per rule as discussed above and then proceed ahead. Therefore, the complainant to note that he has to give verification as per provision of section 200 of Cr.P.C. The case is under the caption of awaiting report. As the report under Section 202 Cr.P.C. is received, the case is now kept under the caption for verification. The case was adjourned on 5th February 2022. Thereafter, the complaint was adjourned to 8th April 2022. On 8th April 2022, the learned Magistrate again recorded the verification statement vide exhibit 10 and the case was adjourned for hearing the argument on issuance of process.

4. Learned Advocate for the Petitioner submitted that, the Court had adopted the procedure which is contrary to the scheme of the law and statute. Once the statement under section 200 of Cr.P.C. is recorded, the learned Magistrate has no other option but to proceed under Sections 201, 202, 203 and 204 of Cr.P.C. The verification statement was recorded by learned Magistrate and directed inquiry under Section 202 (1) of Cr.P.C.. Subsequently, when the matter was listed before another Court, the learned Magistrate again recorded the verification statement and listed the matter for hearing argument on issuance of process. The learned Magistrate could not have set the clock back.

5. It is pertinent to note that, pursuant to the private complaint filed by the Petitioner, verification statement was recorded on 7th March 2020. Vide order dated 13th October 2020, the learned Magistrate directed the senior police inspector, MIDC Police Station to conduct inquiry in consonance with section 202 of Cr.P.C. and submit report. Apparently, the report of inquiry conducted by concerned Police Station was received. Surprisingly, learned Magistrate had again recorded the verification statement and listed the case for hearing on issuance of process. Since the verification statement is already recorded on 7th March 2020 and the Court had proceeded to direct the inquiry in accordance with section 202 of Cr.P.C., the learned Magistrate was not empowered to record the verification statement again on 1st January 2022. It is also pertinent to note that, the report under Section 202 of Cr.P.C. was called for pursuant to verification statement recorded on 7th March 2020. After recording the verification statement once again on 1st January 2022 the report submitted by the Police would become non-est. Learned Magistrate has no power to recall the earlier order. While passing order dated 1st January 2022 and recording the verification statement on 8th April 2022 the learned Magistrate had adopted the procedure contrary to section 200 of Cr.P.C. Hence, order dated 1st January 2022 and the consequential action initiated by the learned

Magistrate such as verification statement on 8th April 2022 are required to be set aside.

ORDER

- (i) Writ Petition No. 2129 of 2022 is allowed;
- (ii) Impugned order dated 1st January 2022, passed by learned Metropolitan Magistrate, 22nd Court, Andheri, Mumbai is set aside. Consequential action initiated by the learned Magistrate pursuant to order dated 1st January 2022 such as recording verification on 8th April, 2022 are non-est and does not survive.
- (iii) The trial Court shall proceed with the matter in accordance with the verification recorded on 7th March 2020.
- (iv) Petition is disposed off.

(PRAKASH D. NAIK, J.)