

VRJ

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

WRIT PETITION NO.1490 OF 2021

Mukesh Parekh	... Petitioner
V/s.	
The State of Maharashtra & Anr.	... Respondents

Mr. Balvant Parmar i/by Ms. Divya Parmar for the petitioner.

Mr. A.R. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 18, 2022

PC.:

- 1.** The challenge in this petition is to the orders dated 4th March, 2020 thereby issuing process in a complaint under section 138 of Negotiable Instruments Act, 1881 and order dated 10th May and 18th May, 2022 passed by the learned Magistrate thereby directing the petitioner to pay an amount of Rs.3,000/- per date from the date of the order till the completion of evidence of complainant.
- 2.** The petitioner challenged the order of issuance of process by way of revision, the revisional Court dismissed representation holding that there is no ground to interfere with the order of issuance of process.
- 3.** Learned advocate for the petitioner submitted that the

accused is residing outside the territorial jurisdiction of the Magistrate and, therefore, inquiry under section 202 of Code of Criminal Procedure was mandatory. Without holding inquiry under 202, an order of issuance of process could not have been passed. He further submitted that the learned Magistrate was not justified in passing order dated 18th May, 2018 thereby directing him to pay an amount of Rs.3,000/- per date.

4. Having considered the submissions, in so far as order dated 18th May, 2022 is concerned, the learned Magistrate was not justified in directing the petitioner to pay an amount of Rs. 3,000/- per date till completion of evidence of the complainant. Such direction is unreasonable and contrary to well settled principle of law that the amount of cost has to be quantifiable amount based on rational factors. It could vary based on number of dates. It cannot be made dependent on uncertain event. In that view of the matter, clause 4 of order dated 18th May, 2022 is modified to the extent that the accused shall pay an amount of Rs.3,000/-. The remaining part of first sentence of paragraph 4 is quashed and set aside.

5. In so far the order of issuance of process is concerned, it is not necessary that the order should reflect satisfaction in specific words that order has been passed 'after holding enquiry under section 202'. The application of mind on the part of learned Magistrate while issuing of process must appear from the reasoning of the order of issuance of process. It is not necessary for the magistrate to state that accused are residing outside the territorial jurisdiction of Magistrate and, therefore, the inquiry

under section 202 of Code of Criminal Procedure is held. The holding of inquiry under section 202 must appear on the basis of the reasons given by the Magistrate. In my opinion, therefore, the revisional Court was justified in refusing to interfere with the order of issuance of process.

6. It is made clear that the petitioner shall co-operate with the Magistrate for expeditious disposal of the complaint and in case the Magistrate is satisfied that the petitioner is not co-operating with the expeditious disposal of the trial, it would be open for the Magistrate to pass appropriate orders.

7. Rule is partly made absolute.

8. Writ petition is thus disposed of in above terms. No costs.

(AMIT BORKAR, J.)