

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [APL] No.836 of 2022

Riaz s/o Jabbar Patel

vs.

M/s. Sachin Krushi Seva Kendra

*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

Mr. Abdul Subhan, Advocate for the Applicant.

CORAM : VINAY JOSHI, J.

DATE : 29th JUNE, 2022.

Heard.

02] This application is of the original accused of S.C.C. No.328/2020 filed by the non-applicant for the offence punishable under Section 138 of the Negotiable Instruments Act. The learned Magistrate, after taking cognizance of the complaint, has issued process in terms of Section 204 of the Code of Criminal Procedure vide its order dated 04/08/2020. Being aggrieved by the said order, the applicant (accused) has invoked revisional jurisdiction of the Sessions Court questioning the legality, propriety and correctness of the order of issuance of process. It reveals from the order of the revisional Court that the applicant has challenged the order of issuance of process on two counts, namely, non issuance of statutory demand notice within the period of limitation and secondly total non-application of mind while passing the impugned order. The learned Sessions Judge after considering those submissions has expressed that the submission on the point of limitation is not tenable, as the period of limitation is

deemed to have been extended in terms of the directions issued by the Supreme Court in Suo Motu Writ Petition No.3/2000. As regards to other contention, the learned Sessions Judge has agreed with the petitioner's contention that the order of issuance of process does not reflect due application of mind. Needless to say that the order of taking cognizance and issuance of summons does not require detailed reasoning, but it must reflect due application of mind. Considering the cryptic order passed by the Magistrate, which is as "Issue summons to NA", the Sessions Court has set aside the order of issuance of process and remitted the matter back to the Magistrate for passing appropriate order.

03] The applicant (accused) has raised his grievance against the order passed by revisional Court dated 21/03/2022. In fact, at present nothing is under challenge since the Sessions Court has only remitted the matter back and yet as per the submission, the trial Court has not passed any order, namely, the order of issuance of process. Therefore, there is no propriety in entertaining this application by invoking inherent jurisdiction of this Court.

04] In view of that, the application stands disposed of. It is made clear that in case of issuance of process, the point of limitation is kept open to be agitated before the higher forum, if so advised.

JUDGE

**sandesh*