

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

CRIMINAL APPLICATION [APL] NO.987 OF 2022

Applicants : 1. **Dev Plastics,**
Through its Proprietor
Smt. Kamla Devkisan Sarda,
Aged about 73 years, Occupation : Business,
R/o Plot No.A-3/2, MIDC, Murtizapur,
District Akola.

2. **Smt. Kamla Devkisan Sarda,**
Aged about 73 years, Occupation : Business.

3. **Sushil s/o Devkisan Sarda,**
Aged about 48 years, Occupation : Business.

Nos.2 & 3, R/o. Sarda Compound, Karanja Road,
Murtizapur, District Akola.

– Versus –

Non-Applicant : **Jaywanti @ Jaya Ashok Jaju,**
Aged about 55 years, Occupation : Housewife,
R/o. 213/8, Lane No.2, Near Chittalwar's
Bungalow, Geeta Nagar, Akola,
Tah. & District Akola.

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Mr. N.R. Tekade, Advocate for the Applicants
Mr. S.A. Mohta, Advocate for the Non-Applicant.

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CORAM : **VINAY JOSHI, J.**
DATE : **19th SEPTEMBER, 2022.**

ORAL JUDGMENT :-

Admit. Heard finally by consent of both the learned Counsel
appearing for the parties.

02] The applicants are the accused in SCC No.3487/2021, which is in relation to Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'Act' for short). The applicants challenged the maintainability of the proceedings on account that the trial Court has not conducted necessary enquiry in terms of Section 202 of the Code of Criminal Procedure (Code) since the accused are residing out of the territorial jurisdiction of the trial Court. The other side objected the challenge by placing reliance on the decision of the Supreme Court in Suo Motu Writ Petition (Cri.) No.2/2020, reported in AIR 2021 SC 1957, which has concluded the issue by expressing that though the enquiry under Section 202 of the Code is mandatory, however, filing of affidavit would suffice the purpose.

03] Perusal of the impugned order dated 28/09/2021 discloses that the learned Magistrate has considered the affidavit of the complainant along with other material while taking cognizance. Though the applicants would submit that the affidavit does not specify the constitution of offence, however, having regard to the scope of enquiry under Section 202 of the Code, the said contention cannot be accepted at this preliminary stage. It is evident that the complainant has filed affidavit in term of Section 145 of the Act and thus the requisite compliance has been made.

04] In view of that, the challenge is untenable. Hence, the application is dismissed.

(VINAY JOSHI, J.)

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