

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

Criminal Writ Petition No.507 of 2022

Sandeep Tulsiram Patil vs. Shivprasad Shankarlal Gupta

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

Court's or Judge's Orders

Mr. Sagar Thakkar, Advocate for the Petitioner.

CORAM : VINAY JOSHI, J.

DATE : 25th AUGUST, 2022.

Heard the learned Counsel appearing for the petitioner-accused. The sole respondent-complainant though served, remained absent.

02] The respondent has filed Summary Criminal Complaint No.15500/2018 for the offence punishable under Section 138 of the Negotiable Instruments Act against the petitioner-accused. The learned Magistrate, by taking cognizance of the complaint, has issued process in terms of Section 204 of the Code of Criminal Procedure (Code). The order of issuance of process has been challenged on the ground of non-compliance of the mandatory requirement of Section 202 of the Code. It is pointed out that the petitioner-accused is resident of Buldhana, which is beyond the area in which the Magistrate exercises jurisdiction. Apparently, the complaint is filed in the Court of Judicial Magistrate, Nagpur meaning thereby the place of residence of accused is beyond his local jurisdiction. In terms of amendment of the year 2005 to Section 202 of the Code, it is obligatory on the Magistrate to postpone the issue of process against the accused in such a cases and either inquire into the case himself or direct an

investigation to be made by the Police. It is informed that the complainant had even not filed affidavit in the Court of Magistrate at the time of issuance of process. Perusal of the impugned order, dated 31/01/2020 indicates that the Magistrate has perused the complaint and verification of the complaint and on that basis has issued a process. The order also does not indicate that the Magistrate has complied the statutory mandate.

03] It is now settled that even in cases under Section 138 of the Negotiation Instruments Act, if the accused is residing out of jurisdiction of Magistrate, still he is bound to comply the amended provision of Section 202 of the Code. No doubt, Section 145 of the Negotiation Instruments Act permits to lead evidence on affidavit, however, the said compliance appears to have not been done. In the circumstances, the impugned order would not sustain in the eyes of law. However, it is not appropriate to dismiss the complaint on mere technicalities.

04] In view of the above, the impugned order dated 31/01/2020 of issuance of process is quashed and set aside. The learned Magistrate is directed to follow the mandate of Section 202 of the Code and pass appropriate orders in accordance with law.

05] The petition stands disposed of in the above terms.

**sandesh*

Signed by: SANDESH DAULATRAO
WAGHMARE
Private Secretary to the Hon'ble Judge
Signing Date: 26.08.2022 18:01

JUDGE