

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**36 CRIMINAL APPLICATION NO.3327 OF 2022**

**SHOBHA W/O. SURESH HIRE AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr.N.R. Shaikh, Advocate for the applicants.

Mr.PN. Kutti, APP for the respondent/State.

Mr.PB. Patil, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.  
DATED : 15.03.2023**

**PC :-**

01. Heard learned Advocates for the parties. The application is taken up for final disposal by the consent of learned Advocates for the parties.

02. This application is against an order dated 09.07.2019 passed by the learned JMFC, Court No.2, Chalisgaon in Cr. M.A. No.979 2018 issuing process against present applicants and husband of respondent No.2. Present applicants are mother-in-law, brother-in-law and sister-in-law respectively of respondent No.2. The informant filed an application bearing Cr.M.A. No.979 of 2018, now same is re-numbered as RCC No.303 of 2019, with allegations under sections 498A read with 34 of the Indian Penal Code. The learned Advocate for the applicants submits that looking to the complaint as it is, it is

seen that there is no specific allegation made against any of the applicants to this application. At the most the allegation appears to be against husband, who is not a party before this Court. From reading of the complaint, he submits that the allegations are omnibus and non-specific. Secondly, he submits that the order dated 29.11.2019 issuing process does not show application of mind. The next ground pressed into service by the learned Advocate for the applicants is that all the applicants are residing at Pachora, Dist. Jalgaon i.e. beyond territorial jurisdiction of the learned Magistrate, who issued the process. It was necessary to hold an inquiry as contemplated under section 202 of the Cr.P.C. He further submits that in the verification, the allegations which are made in the complaint are absent. He relies upon judgments in the cases of Kalyansing s/o. Komalsing Patil Vs. State of Maharashtra, 2019 ALL MR (Cri) 4475, N.S.Madhangopal & Anr. Vs. K.Lalitha, 2022(3) Law Summary 39, Shabnam Sheikh w/o. Arif Sheikh & Ors. Vs. State of Maharashtra, 2021 (3) Cri.C.C.17, M/s. Pepsi Foods Ltd. Vs. Special Judicial Magistrate, 1998 AIR (SC) 128 and Dhariwal Tobacco Products Lrtd. & Ors. Vs. State of Maharashtra & Anr., 2011 AIR (SC) 1846.

03. The learned Advocate for respondent No.2 vehemently argued the

matter and opposed the application. He submits that on reading the complaint, it does appear that there are allegations against all the applicants. He further submits that the alleged instances have taken place at Pune. The applicants are residing at Pune. However, only in the application their address is of Pachora. On the submission of non-observance of procedure under section 202 of the Cr.P.C. he submits that the incident has taken place at Chalisgaon and therefore Chalisgaon Court has jurisdiction and from the order it appears that the Court has done verification of the complainant as well as other documents and submits that no interference is required in the order. The learned Advocate for respondent No.2 raised preliminary objection by submitting that there is alternative remedy and relied upon paras 23 and 25 of the judgment in the case of VK Jain and Ors. Vs. Pratap V. Padode, 2005(3) Mh.L.J.778.

04. The learned APP also submits that a case is clearly made out. However, he fairly concedes that inquiry under section 202 of the Cr.P.C. is not conducted in the matter.

05. Considering the above, this Court finds that the Court below has

not taken into consideration procedure as contemplated under section 202 of the Cr.P.C. wherein accused persons are staying outside jurisdiction of the Court of learned Magistrate. There are also no specific allegations and on this count also this Court finds that the impugned order needs to be set aside. It is also further necessary to quash the proceedings of RCC No. 303 of 2019 to the extent of present applicants. This Court finds no substance in the submission that in view of alternative remedy this application cannot be entertained. This Court has in many cases held that alternative remedy is no bar in such cases.

06. In this view of the matter, the application is allowed in terms of prayer clause (A) and disposed off.

**[KISHORE C. SANT, J.]**