

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

984 CRIMINAL WRIT PETITION NO.1813 OF 2022

ASHOK SHAMRAO PAWAR AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mrs. Manjushri V. Narwade
APP for Respondent – State : Ms. R.P. Gour
Advocate for Respondent No.2 : Mr. R.R. Karpe

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CORAM : R. M. JOSHI, J.
DATE : 7th JULY, 2023

PER COURT :

. At the outset, learned counsel for petitioners seeks leave to amend prayer clause thereby excluding the portion of the impugned order discharging accused no.2.

2. Leave granted.

3. Amendment to be carried out forthwith.

4. This petition is filed taking exception to the order dated 12.07.2014 passed by Judicial Magistrate First Class, Shrigonda in R.T.C. No.122 of 2014 whereby the process was issued against accused no.1 for the offence punishable under Section 494 of Indian

Penal Code and abated accused no.3 to 22 of the said crime. Accused nos.6 and 7 have filed this petition by contending that the order passed by learned Magistrate is not tenable in the eyes of law for non-compliance of mandatory provisions of Section 202 of Code of Criminal Procedure, 1973 (hereinafter, 'Cr.P.C.'). It is contended that petitioners are residents of Kalamba, Tal. Indapur, Dist. Pune and hence learned Magistrate could not have issued process against them without conducting an enquiry into the case himself or directing the investigation to be made by the Police Officer or by such person as he thinks fit. Perusal of the impugned order does not reflect that any such enquiry was conducted by learned Magistrate as contemplated under Section 202 of the Cr.P.C.

5. The impugned order seems to have been passed only on the basis of verification and statement of complainant in the complaint. Certified copy of the complaint filed on record indicates that even other accused persons are residence of the village beyond the jurisdiction of the learned Magistrate. Hence, learned Magistrate ought to have postponed the issuance of process and he should have conducted an enquiry by himself or directed an investigation to be done by the Police Officer. For want of compliance of this provision,

the impugned order cannot be sustained. Hence, the impugned order dated 12.07.2014 is hereby set aside except for the order of discharge of accused no.2, since it is not challenged by prosecution.

6. Learned Magistrate to deal with complaint against the accused, except discharged accused no.2, to decide question of the issuance of process afresh in accordance with law.

[R. M. JOSHI]
JUDGE

GGP