

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

39 CRIMINAL WRIT PETITION NO.1894 OF 2019

**ANIL S/O. EKNATH BHANDARI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr.A.A. Reddy, Advocate for the petitioner.

Mrs.D.S. Jape, APP for the respondent/State.

Mr.A.P. Basarkar, Advocate (appointed) for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 24.02.2023**

PC :-

01. Heard learned Advocate or the parties. Taken up for final disposal by the consent of the parties.

02. Heard learned Advocate for the petitioner. The original accused in a proceedings under section 138 of the Negotiable Instruments Act has approached this Court for quashing of the proceeding bearing SCC No.3432 of 2016 pending before the learned Additional Chief Judicial Magistrate, Ahmednagar. The applicant had filed application to the said Court for cancelling the summons issued to the accused. Same came to be rejected by order dated 15.07.2019.

03. The facts in short are that the respondent filed complaint under section 138 of the Negotiable Instruments Act in the Court of Chief Judicial Magistrate, Cantonment Board, Pune. The Pune Court issued process by order dated 22.07.2015. However, in view of ordinance, it was realised that the jurisdiction would be with the Court at Ahmednagar and therefore the complaint was returned to the original complainant. There is endorsement of closing of the process and disposal is shown on 31.03.2016 in the Court at Pune. The complaint was actually taken back by the respondent on 26.09.2016 and was presented in the Court at Ahmednagar and this is how the complaint came to be registered in the Court at Ahmednagar.

04. The petitioner, thereafter, filed an application which came to be rejected as stated above and therefore the petitioner is before this Court.

05. The learned Advocate for the petitioner vehemently submits that when the process was issued on 22.07.2015 by Pune Court, on that day itself that Court had no jurisdiction to take cognizance of the complaint under section 138 of the NI Act in view of the ordinance published by the

Government. He submits that, therefore, the entire process thereafter is vitiated. Secondly, he argued that on the date on which process was issued, it was issued without holding inquiry as contemplated under section 202 of the Cr.P.C. as accused were residents of outside the territorial jurisdiction of the Court at Pune. Third ground he raised is that when the complaint was returned on 31.03.2016, same was, however, presented after more than six months and thus it was beyond period of limitation.

06. The learned Advocate for the respondent/original complainant submits that the learned Trial Judge has rightly passed the order considering all the aspects involved in the matter. He submits that the ground that the complaint was not submitted within time after it was returned to him is also not correct, by pointing out para 8 of the order stating that he had received complaint on 22.09.2016. He has specifically filed an affidavit to that effect, which is not controverted. Secondly, he submits that in view of the judgment reported in **2021 AIR (SC) 1957 IN RE : Expeditious Trial of Cases under Section 138 of N.I. Act, 1881**, it was mandatory to hold an inquiry under section 202 of the Cr.P.C. However, same exercise can be done even now. About jurisdiction with Pune Court on the date of issuance of order, he

submits that for this purpose the matter would be remanded.

07. Considering the above submissions this Court finds that the submissions of the learned Advocate for the petitioner deserves to be accepted as on the date of presentation of the complaint in the Pune Court, said Court had no jurisdiction. Second submission about following the procedure under section 202 of the Cr.P.C. also deserves to be accepted. The third ground that after the complaint was returned to the complainant, same was not filed within a period of one month is concerned, it is rightly pointed out by the complainant that the complaint was returned to him on 22.09.2015, which was not controverted. Thus, taking into consideration all the above facts, this Court finds that the petition can be partly allowed by directing the learned Trial Court to pass fresh order by following proper procedure. Hence, following order :-

ORDER

- (i) The petition is partly allowed.
- (ii) The impugned order is quashed and set aside.
- (iii) The learned Trial Court to undertake fresh exercise and issue fresh process by following judgment reported in(2021) AIR (SC) 1957.

- (iv) With this the petition stands disposed off.
- (v) The learned Advocate Mr. Basarkar was appointed through legal aid. Looking at the efforts he has put in, his fees is quantified at Rs.7000/- (Rupees Seven Thousand).

[KISHORE C. SANT, J.]