

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1373 OF 2023

Vilas Haribhau Kulkarni

...Petitioner

Versus

Tatyasaheb Sandipan Warade & Anr

...Respondents

Ms. Manisha Devkar, Advocate for Petitioner.

Mr. Mahadeo A. Choudhari, Advocate for Respondent No.1.

Mr. A.R. Patil, APP for State/Respondent.

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CORAM : SARANG V. KOTWAL, J.

DATE : 29th AUGUST 2023

PC :

1. Heard both the parties.

2. Rule.

3. Rule is made returnable forthwith with consent of the parties.

4. The Petitioner is the Accused in S.T.C. No.108 of 2022.

The Respondent No.1 is the original Complainant before the Judicial Magistrate First Class at Mohol (for short "J.M.F.C."). The learned Judicial Magistrate vide his order dated 19th April 2022 had issued process against the Petitioner for commission of offence

punishable under Section 138 of Negotiable Instruments Act, 1881. The said order was challenged by the Petitioner before the learned Additional Sessions Judge, Solapur vide Criminal Revision Application No.41 of 2022. The said Revision Application was rejected vide order dated 20th January 2023. After that, the Petitioner has preferred the present Petition. At the outset, learned Counsel for the Petitioner states that, she is not raising any issue on merits of the case. She is only restricting her arguments for non- fulfillment of mandatory provisions under Section 202 of Criminal Procedure Code, 1973 (for short “Cr.P.C.”). It is her contention that the Petitioner is not residing within the jurisdiction of J.M.F.C. Mohol. The complaint itself mentions in the title that the Petitioner is a resident of Pandharpur. Therefore, according to her, the learned Magistrate was duty bound to conduct inquiry under Section 202 of Cr.P.C. The Section 202 of Cr.P.C. reads thus:

“202. Postponement of issue of process.–

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where

the accused is residing at a place beyond the area in which he exercises his jurisdiction postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made-

- (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or
- (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he

shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under subsection (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.”

Therefore it was mandatory for the learned Magistrate to have conducted the inquiry.

5. Learned Counsel for the Respondent No.1-Complainant submitted that both the parties are in fact residing in the same village, therefore, it was not necessary for the learned Magistrate to have conducted the inquiry under Section 202 of Cr.P.C.

6. I have considered these submissions. The title of the complaint itself shows that the Petitioner was residing at Pandharpur and not within the jurisdiction of the J.M.F.C. at Mohol. Therefore, as per the requirements of Section 202 of Cr.P.C., the inquiry was necessary. The impugned order of issuance of process makes no reference to any such inquiry and, in fact,

does not refer to any other documents other than the complaint for issuing the process.

7. Considering this short point, the matter is required to be remanded back, so that the inquiry under Section 202 of Cr.P.C. is conducted in accordance with law. All the contentions of the parties can be left open for the learned Magistrate. Since the matter has progressed further, it is necessary to give directions; so that this inquiry can be completed at the earliest and further steps if any, can be taken by the learned Magistrate.

8. Hence, the following order:

ORDER

- i) The order dated 19th April 2022 passed by J.M.F.C. Mohol in S.T.C. No.108 of 2022, issuing process against the Petitioner, is set aside.
- ii) The learned Magistrate shall conduct inquiry under Section 202 of Cr.P.C. and after such inquiry, he shall proceed further in accordance

with law.

iii) The inquiry under Section 202 of Cr.P.C. shall be conducted within a period of two months from today.

iv) All the questions raised by both the parties are left open.

v) With these directions, the Writ Petition is disposed of and the Rule is made absolute in the aforesaid terms.

(SARANG V. KOTWAL, J.)