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

CRIMINAL APPLICATION NO.288 OF 2023

Ismail Suleman Shaikh

... Applicant

V/s.

Dnyaneshwar Balasaheb Kshirsagar and
Anr

... Respondents

Mr. Abhishek Kulkarni i/b Suvidh Kulkarni for the
applicant.

Mr. M.G. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 20, 2023

P.C.:

- 1.** The applicant is an accused in a proceeding under Section 138 of the Negotiable Instruments Act, 1881.
- 2.** The order of issuance of process is passed on 18th January, 2017. The applicant refused to accept summons on 20th July, 2019. Therefore, 20th July, 2019 is the date of knowledge of the impugned order.
- 3.** However, without any explanation for approaching this court belatedly, the applicant has filed the present application on 16th March, 2023. In absence of explanation for approaching this Court belatedly the application need not to be entertained. However, in view of contentions raised by the applicant, the applicant being resident of area outside the territorial jurisdiction of the Magistrate, inquiry under Section 202 of the Code of Criminal

Procedure, 1973 is mandatory. In support of his submission he relied on circular of this Court bearing No. Rule/P.1605/2022, he also relied on unreported judgment of this Court in case of **Dattaprasad Sanduji Ambilwade Vs. The State of Maharashtra**, in Criminal application No.1655 of 2021 and in the case of **Ismail Suleman Shaikh Vs. Hanif Rafique Sayyad**, in Criminal Application No.3194 of 2022.

4. There cannot be a dispute that as regards the accused residing outside territorial jurisdiction of Magistrate inquiry under Section 202 of the Criminal Procedure Code, 1973 is mandatory. On perusal of the roznama it appears that the complaint was filed on 29th November, 2016. It was the hearing as to issuance of process was postpone on 27th December, 2016 and subsequently on 18th January, 2017 the Magistrate issued process. On perusal of the order, the petitioner is unable to demonstrate as to inquiry under Section 202 of the Criminal Procedure Code, 1973 is not held. The Apex Court in the case of **Sunil Todi and Ors Vs. State of Gujrat and Another**, reported in 2021 SCC OnLine 1174 in paragraph 46 as held as under :-

46. Section 145 of the NI Act provides that evidence of the complainant may be given by him on affidavit, which shall be read in evidence in an inquiry, trial or other proceeding notwithstanding anything contained in the CrPC. The Constitution Bench held that Section 145 has been inserted in the Act, with effect from 2003 with the laudable object of speeding up trials in complaints filed under Section 138. Hence, the Court noted that if the evidence of the

complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. Consequently, it was held that Section 202(2) CrPC is inapplicable to complaints under Section 138 in respect of the examination of witnesses on oath. The Court held that the evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses and in suitable cases the Magistrate can examine documents to be satisfied that there are sufficient grounds for proceeding under Section 202.

5. The said judgment is followed by the learned Single Judge by this Court in the Case of **Dattaprasad Ambilwade** (Supra), the learned Single Judge of this Court held that in suitable cases the Magistrate can examine documents to be satisfied about the sufficient ground to proceed under Section 202 of the Criminal Procedure Code, 1973.

6. In the facts of the case, considering the impugned order, I am satisfied that the Magistrate has held inquiry under Section 202 of the Criminal Procedure Code, 1973 by postponing issuance of process to next date. If this be so, the judgment relied upon and circular by the applicant is of no help to the applicant.

7. There is no merit in the application, the Criminal Application stands dismissed. No costs.

(AMIT BORKAR, J.)