

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

CRIMINAL WRIT PETITION NO. 2415 OF 2022

Bhargav Patel & Ors. ... Petitioners
Versus
Tushar Maganlal Sonigra & Anr. ... Respondents

Mr. Yashpal M. Thakur for the Petitioners.
Ms. M. R. Tidke, APP for the Respondent No.2-State.

CORAM: R. N. LADDHA, J.

DATE : 4 SEPTEMBER 2023

P.C. :-

. Heard Mr Yashpal Thakur, the learned counsel appearing on behalf of the petitioners and Ms Tidke, learned Additional Public Prosecutor for the respondent State.

2. The petitioners in this case have been accused in a private complaint filed by respondent No.1/original complainant. The complaint led to the issuance of a process for offences punishable under Sections 406 and 420 read with 34 of the Indian Penal Code.

3. According to the complaint and verification statement, it seems that the issue at hand relates to a monetary payment. The verification statement specifies that respondent No.1 complainant

has received a partial payment from the accused for invoices generated for a Navratri event organized by the accused in 2016, 2017 and 2018.

4. Mr Yashpal Thakur, learned counsel for the petitioners, has drawn the Court's attention to respondent No.1's verification statement, which is in the form of affidavit. A photocopy is attached to this petition. He submitted that respondent No.1 complainant's typed verification statement is an affidavit affirmed before the judicial clerk of the trial Court, with only an endorsement 'R & R (Read and Recorded)', by the Magistrate and complains that there was no examination of the complainant made on oath by the learned Magistrate as required by Section 200 of the Criminal Procedure Code, 1973 (for short 'Cr.P.C.'). As a result, Mr Thakur, contends that the order to issue process and subsequent proceedings are illegal and should be quashed.

5. In support of his contentions, he relied on following judgments:

(a) *Medmeme, LLC & Ors. v/s. iHorse BPO Solutions Pvt. Ltd.*¹

(b) *Vir Prakash Sharma v/s. Anil Kumar Agarwal & Anr.*²

(c) *Anil Mahajan v/s. Bhor Industries & Anr.*³

1 (2018) 13 SCC 374.

2 2007 SCC OnLine SC 957.

3 (2005) 10 SCC 228.

(d) *Harish Khushalchand Chandak v/s. The State of Maharashtra & Anr.*⁴

(e) *Prashant Harshad Valia v/s. State of Maharashtra & Anr.*⁵

6. According to Section 200 Cr.P.C., before taking cognizance of an offence based on a private complaint, it is the responsibility of the Magistrate to examine the complainant and any present witnesses under oath. The substance of this examination must be recorded in writing and signed by the complainant, witnesses and Magistrate. The law does not require a private complaint to be affirmed under oath. However, by catena of decisions, the Hon'ble Supreme Court has observed that issuing a process on a private complaint is a serious matter and the law provides a safeguard in the form of an examination of the complainant under oath as per Section 200 Cr.P.C.

7. The purpose of this is to ascertain the truth by questioning the complainant under oath. Section 200 Cr.P.C. requires the Court to examine the complainant under oath and record the substance of his examination in writing. The purpose of Section 200 Cr.P.C. is to determine the truthfulness of the complainant's claim.

4 Criminal Writ Petition No. 2264 of 2008 decided on 28 April 2009.

5 Criminal Application No. 718 of 2019 decided on 11 December 2019.

8. In the instant case, it appears that respondent No.1 complainant drafted an affidavit, which was affirmed before the judicial clerk of the concerned Court. The learned Magistrate made an endorsement on the affidavit stating 'R & R (Read and Recorded)'. However, Section 200 Cr.P.C. does not allow for the examination of the complainant by the Magistrate via affidavit. As such, it is not possible to consider the alleged verification of respondent No.1 complainant in the form of an affidavit as an examination of the complainant under Section 200 Cr.P.C. Without an examination of the complainant under Section 200 Cr.P.C., the Magistrate cannot proceed to exercise powers under Sections 202, 203 and 204 Cr.P.C.

9. Therefore, the order of issue process based on such purported verification is illegal and is liable to be set aside. However, at the same time, it must be considered that if the Magistrate did not fulfill his duty under Section 200 Cr.P.C., respondent No.1 complainant should not be held responsible and should not have to endure any consequences due to the Magistrate's failure. As a result, while there is justification for overturning the order to issue the process, the Magistrate should be directed to continue with the complaint from the point of examination under Section 200 Cr.P.C.

10. For the reasons stated above, the impugned order dated 26 May 2022 passed by the learned Magistrate, 65th Court, Andheri,

Mumbai, in C.C. No.258/SW/2022 (Old No.602/Misc/2020) is quashed and set aside.

11. In view of this, the learned Magistrate is directed to record the complainant's verification as per Section 200 Cr.P.C. After adhering to the stipulations of Section 200 Cr.P.C., the learned Magistrate shall proceed to make a decision on the complaint in accordance with law.

12. The petition as such stands disposed of. It goes without saying that if necessary, the petitioners are free to seek legal redress for their grievances, if occasion so arises.

13. All contentions of all the parties are expressly left open.

R. N. LADDHA, J.

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