

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

CRIMINAL APPLICATION NO.1067 OF 2023

Kunal Ashok Mehta

.....Applicant

Versus

The State of Maharashtra

& another

.... Respondents

Mr. B.B. Tiwari, Advocate for the Applicant.

Mr. S.H. Yadav, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 06th SEPTEMBER, 2023

P.C. :

1. At the outset, learned counsel for the Applicant states that he is not arguing this application on merits of the matter as his objection to passing of the order is only technical in nature. His basic submission is that the Magistrate has not followed the mandatory provision of Section 200 of Cr.P.C. and he has erroneously passed the order under Section 202 of Cr.P.C.

2. The Applicant is the original accused in the complaint No.334/SW/2016 before the Metropolitan

Magistrate, 10th Court, Andheri, Mumbai. The complaint was filed by the Respondent No.2 on the allegation of commission of the offences punishable under Sections 420 and 406 of IPC. This complaint was filed on 22.8.2016. On that day, the Magistrate's order mentions as follows :

“Complaint filed today. Put up for verification, returnable on 1.10.2016.”

3. Thereafter it appears that on 25.10.2016, there is a verification recorded before the Magistrate at Exhibit-3 in the said proceedings. Said verification is annexed at Exhibit-F to the present Application. After that, the learned Magistrate on 18.3.2017 passed an order as follows :

“1. Perused the complaint, verification of complainant and the documents annexed with complaint. Heard Ld. Advocate for the complainant. It seems that the accused is residing beyond the jurisdiction of this court and therefore it would be appropriate to send the matter for inquiry and report by the concern police station U/Sec. 202 of Cr.P.C.

2. Therefore, complaint be send to Sr. Inspector of Police, Juhu Police Station for inquiry and submit the report U/Sec.202 of Cr.P.C.

3. Report returnable on 22.05.2017.”

4. After that the Senior Inspector of Police, Juhu police station, filed a report dated 25.9.2017, wherein it was mentioned that the transaction between the complainant and the accused was in the nature of civil dispute.

5. After this report was filed, the complainant filed an application at Exhibit-5. He titled it as “Protest Application against police report under Section 202 of Cr.P.C.”. Learned Magistrate after that passed an order on 15.11.2018 issuing process against the Applicant under Sections 420 and 406 of IPC.

6. As mentioned earlier, learned counsel for the Applicant has specifically restricted his arguments only on the grounds of non-compliance of the mandatory procedure and irregularity in the procedure. He has not touched upon merits of the matter and in particular to the allegations and nature of transaction between the parties. He has not argued as to how learned Magistrate erred in differing from the police report on merits. Therefore, I have considered his submissions from that angle.

7. The main submission of learned counsel for the Applicant was that learned Magistrate has not followed the mandatory procedure under Section 200 of Cr.P.C. His next submission was that the Applicant was very much residing within the jurisdiction of learned Magistrate and, therefore, the first order of sending the matter for inquiry under Section 202 of Cr.P.C. itself was an irregularity and, therefore, all the following stages vitiate the entire procedure including the order of issuance of process.

8. I have considered these submissions. As far as the first contention regarding non-compliance of Section 200 of Cr.P.C. is concerned, Exhibit-F annexed to this application shows that it is exhibited at Exhibit-3 in the trial proceedings. It is clear from the document that it was 'verification'. It was signed by the learned Magistrate himself at the end of the verification and he has noted that it was taken before him. The verification started with the sentence that it was made on solemn affirmation. Therefore, this particular document shows that there was sufficient

compliance of Section 200 of Cr.P.C.

9. As far as the second contention regarding the order passed under Section 202 of Cr.P.C. is concerned, though the accused was residing within the jurisdiction of learned Magistrate, to that extent the Magistrate may have erred in observing that the accused was residing beyond the jurisdiction but calling for the inquiry report under Section 202 of Cr.P.C. does not affect merits of the matter and if at all it may assist the Magistrate in arriving at his decision as to whether cognizance should be taken. At the highest it can be termed as irregularity but it does not go to the root of the matter to deny the complainant to prove his case during trial. After that order was passed, the police report was filed and the learned Magistrate has given reasons for differing with the police report. His impugned order mentions that he had perused the complaint, statement on oath and the police report. After that he has discussed as to why he was differing with the police report. Therefore, from the record it is clear that the Magistrate has followed the proper

procedure and has applied his mind and, therefore, I do not see any infirmity in the impugned order on the technical ground raised by learned counsel for the Applicant. It is clarified that since merits of the matter was not argued before me, I have not expressed any opinion on the merits of the matter. The merits of the matter are left open to be decided at the trial stage. With these observations, the Application is dismissed.

(SARANG V. KOTWAL, J.)

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