

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

CRIMINAL REVISION APPLICATION NO.131 OF 2017

1. Debdatta Bandyopadhyay
Ag : 65, Occupation : Advocate
(Retired Govt. Servant), Resident of 113
A/6,
Sarat Ghosh Garden Road,
Dhakuria, Kolkatta – 700 031.
Versus
...Applicant in
person/ (Orig.
Complainant)
1. S. Balaraju & Ors.
Presently working as Additional Textile
Commissioner in the office of the Textile
Commissioner, Ministry of Textiles,
Government of India, New CGO
Building, Nishta Bhavan, 48, New Marine
Lines, Mumbai – 20 and presently residing
at 301, Devgiri, IIT Bombay Staff CHSL,
Powai, Mumbai and having permanent
address at Village Karavanja, Jalamuru
(S.O.), Srikakulam District, Andhra Pradesh.
...Orig. Accused
No.1.
2. Smt. Smita Phadke
Ex-UDC (Retired from Govt. Service on
VRS) Office of the Textile Commissioner,
Ministry of Textiles, Government of
India, New CGO Building, Nishta
Bhavan, 48, New Marine Lines, Mumbai
-20 and present residing at 502,
Shivashish Co. Housing Society, Kalwa
Post Office building, Old Belapur Road,
Kalwa (West), Thane – 400 065.
...Orig. Accused
No.2.

3. T.L. Balakumar
working as Deputy Director (Non-Technical) in the office of the Textile Commissioner, Ministry of Textiles, Government of India, New CGO Building, Nishta Bhavan, 48, New Marine Lines, Mumbai – 20 and posted in Mumbai and residing at Mumbai, with additional charge of Regional Office of the Textile Commissioner, Coimbatore with address at Dwaraka Mai Apartments, 166, Balasubramaniam Road, K.K. Pudur, ... Orig. Accused Coimbatore, Tamil Nadu. No.3

4. S. Rajashekar
Retired Joint Textile Commissioner, Office of the Textile Commissioner, Ministry of Textiles, Government of India, New CGO Building, Nishta Bhavan, 48, New Marine Lines, Mumbai – 20 and presently residing at Flat No.201, 2nd Floor, Sy. No.116/1, Amrita Ave Apartment, II Main, A Munireddy Layout, Horamau Main Road, Bangaluru ...Orig. Accused – 43, Karnataka State. No.4

5. State of Maharashtra (To be served through the Office of Ld. Public Prosecutor, High Court, Bombay) ...Respondent

None for the Applicant.

Mr. D.P. Singh, Advocate for the Respondent Nos.1 and 3.

Mr. H.J. Dedhia, APP for Respondent - State.

CORAM : S. M. MODAK, J.
DATE : 31st JANUARY 2024

JUDGMENT :-

1. Heard learned Advocate for the Respondent Nos.1 and 3 / orig. accused. The applicant – complainant is not present. This Revision was admitted on 4th December 2019 as some urgent issues were raised.
2. After long gap the Revision was listed on 10th January 2024. Except the learned Advocate for the Respondent Nos.1 and 3 and learned APP, no one was present on behalf of the Applicant. That is why it is kept today. Today also no one was present. Applicant is certified by the Registry to present his own case.
3. With the assistance of learned Advocate for the Respondent, I have perused the case papers. The Court of Additional Chief Metropolitan Magistrate, Esplanade on 20th February 2016 was pleased to issue process against all the accused for the offences punishable under Section 120(B), 192, 196, 461, 462 and 465 of Cr. P.C. (page 90).
4. It was a complaint instituted otherwise on police report (page 58). This order was challenged on behalf of the accused persons and the learned Additional Sessions Judge, Greater Mumbai as per order dated 21st November 2016 was not pleased to allow the Revision in

toto. However, the order of process was set aside and the matter was remanded to the trial Court to follow the provisions of Section 202 of Code of Criminal Procedure.

Grounds in Revision

5. I have perused the grounds taken in Memo of Revision. Contention of the complainant is that his verification is already recorded on 30th November 2015 by the trial Court (page 87). As it is already recorded what more inquiry is required to be conducted as per the provisions of Section 202 of the Cr. P.C. His contention is that earlier also the learned Magistrate has issued a process on 7th May 2015 (page 80) and it was set aside by the Revisional Court on 29th August 2015. It was for the lacuna and complying the procedure if the accused are residing outside the territorial limits of the trial Court. According to him, in view of the new verification, the order of issue of process was proper and the learned Additional Sessions Judge ought not to have set aside the process.

Contention of Respondent

6. Whereas, according to the learned Advocate for the Respondent Nos.1 to 3, even though fresh verification was recorded and even

though fresh order of issue of process was passed, the learned Additional Sessions Judge was justified in interfering in the said order for the reason that the order passed by the Magistrate on 22nd February 2016 nowhere discloses that the procedure followed by him was as per section 202 of Cr.P.C.

7. I have read the impugned order and more specifically paragraph Nos.12 to 14. Learned Additional Sessions Judge has emphasized on the same aspect. I am not inclined to interfere in the said order. It is for the reason that even though fresh verification is recorded, learned Magistrate has nowhere expressed in the order that this was in compliance of an inquiry contemplated under section 202 of Cr.P.C. There is no merit in this Revision.

Inquiry u/s. 202 of Cr.P.C.

8. It is true that as per the provisions of Section 200 of Cr.P.C., examination of the complainant on oath and witnesses, if any, is contemplated by the Magistrate and prior to taking cognizance of an offence. Whereas, Section 202 of the Code empowers the Magistrate to postpone the issue of process if he thinks fit. In that eventuality, two options are open to him. Either he may conduct an inquiry himself or

he may order investigation by the Police. This inquiry is optional if the Magistrate deems fit, and is mandatory if the accused are residing beyond the territorial limits.

9. In this case, accused are residing outside the limits of the Trial Court. So inquiry is mandatory. So the issue is “*whether recording of verification can be considered as inquiry conducted by the Magistrate himself as per Section 202 of Code*”. There is a purpose behind incorporating the mandatory nature of inquiry as per Section 202. It is for the reason that the trial Court Magistrate should not issue the process in a light manner. So to say, if the accused are residing outside the limits, they should verify the allegation in the complaint and whether the case is made out. No doubt, the law does not contemplate how such inquiry can be conducted. It can either by examination of complainant and also by examining the witnesses. It depends upon the facts of the individual case.

10. Learned Magistrate in the impugned order in paragraph No.3 has referred about the order passed by the learned Additional Sessions Judge in the earlier revision. Furthermore, learned Magistrate has taken a note of the provisions of Section 195 of the Code.

11. Thus, so far as the merits of the allegations, the order nowhere reflects that it conducted an inquiry as contemplated under section 202 of Cr. P.C. He could have recorded a finding that the verification statement of the complainant was sufficient enough so as to comply an inquiry under Section 202 of Cr.P.C. Unfortunately, that is not reflected in the order. So I conclude that learned Additional Sessions Judge was right in setting aside the order of issue of process. Order of remand is proper.

12. Now, on this occasion, at least we may expect the learned Magistrate to take a conscious call and to pass appropriate order on the complainant by satisfying himself about requirement of an inquiry under section 202 of Cr. P.C.

13. It is contended that the Applicant – Complainant is not appearing before the learned Metropolitan Magistrate. In that eventuality, learned Metropolitan Magistrate is at liberty to proceed further as per the law.

14. With these observations, Revision is dismissed.

15. Interim relief, if any, stand vacated.

[S. M. MODAK, J.]