

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

Criminal Writ Petition No. 4313 of 2024

Mr Ishwar Gulabbhai Naik,
aged :70 years,
residing at Chandrama,
2nd Floor, 21, Kala Nagar CHS,
Bandra (East), Mumbai-400051.

... Petitioner

Versus

1. Mr Prakash Vasant Kuray
Aged – 70 years, Occ -
residing at Chandrama,
Ground Floor, 21, Kala Nagar CHS,
Bandra (East), Mumbai-400051.

2. The State of Maharashtra

... Respondents

Mr Karansingh Rajput i/by Fauzan Shaikh, for the petitioner.

Mr Gaurav Gokhale for respondent No.1.

Mr Swapnil S Pednekar, Addl PP, for the respondent No.2/
State.

Coram: R.N. Laddha, J.

Date: 25 February 2025.

P.C.:

Heard Mr Karansingh Rajput, the learned Counsel appearing on behalf of the petitioner; Mr Gaurav Gokhale, the learned Counsel for respondent No.1, and Mr Swapnil Pednekar, the learned Additional Public Prosecutor representing

respondent No.1/State.

2. The petitioner in this case, has been arraigned as an accused in a private complaint bearing CC No.231/SW/2014 filed by respondent No.1/ original complainant before the Metropolitan Magistrate, 32 Court, Bandra, Mumbai. The complaint led to the issuance of process for offences punishable under Sections 417, 420 and 467 of the Indian Penal Code.

3. The learned Counsel for the petitioner has drawn the attention of this Court to respondent No.1's verification statement and submits that respondent No.1/ complainant's typed verification statement is not in consonance with Section 200 CrPC. The learned Counsel further submits that there was no examination of the complainant by the learned Magistrate as required by Section 200 CrPC and the order to issue process and subsequent proceedings are illegal and should be quashed.

4. On the other hand, the learned Counsel for respondent No.1 and the learned APP, jointly submits that the defective verification statement cannot be the sole ground to quash the issue process order.

5. According to Section 200 CrPC, 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. By a 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 examination of the complainant on oath as per Section 200 CrPC. The purpose of Section 200 CrPC is to determine the truthfulness of the complainant's claim.

6. In the present 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 "Seen and filed". However, Section 200 CrPC does not allow for examination of the complainant by the Magistrate through 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 CrPC. Without an examination of the complainant under Section 200 CrPC, the Magistrate cannot proceed to exercise powers under Sections 202, 203 and 204 CrPC. Therefore, the order of issue process based on such purported verification is illegal and liable

to be set aside. However, at the same time, it must be considered that if the Magistrate did not fulfil his duty under Section 200 CrPC, respondent No.1/ complainant should not be held responsible and should not have to endure any consequences due to the Magistrate's lapse. 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 CrPC.

7. For the reasons stated above, the impugned order dated 17 January 2024, passed by the learned Metropolitan Magistrate, 32 Court, Bandra, Mumbai, in CC No.231/SW/2014, is quashed and set aside and the learned Magistrate is directed to record the complainant's verification statement as per Section 200 CrPC. After adhering to the stipulations of Section 200 CrPC, the learned Magistrate shall proceed to make a decision on the complaint in accordance with the law.

8. Accordingly the petition stands disposed of. It goes without saying that if necessary, the petitioner is free to seek legal redress for his grievances, if occasion so arise.

[R.N. Laddha, J.]