IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No. 6242 of 2024

(This order is corrected as per speaking to the minutes of the order dated 22/4/2025)

Shivprasad Ramkhilavan Gupta
Aged 52 years, Indian Inhabitant,
Having address at Room No.3,
Ground Floor, Ramkhilavan Gupta
Chawl, Patel Wadi, Veera Desai Road,
Opp. Evershine, Cosmic, Behram Baug,
Jogeshwari (W), Mumbai – 400 102.
Presently residing at Scout Camp Road,
Kadam Nagar, Behram Baug,
Jogeshwari (West), Mumbai – 400 102. … Petitioner

versus

1. The State of Maharashtra
At the instance of Oshiwara
Police Station, Mumbai.

2. Pramila Vinod Gupta
Age 35 years, Indian Inhabitant,
R/at. 1st Floor, above Room No.3,
Ramkhilavan Gupta Chawl,
Patel Wadi, Veera Desai Road,
Opp. Evershine Cosmic,
Behram Baug, Jogeshwari (W),
Mumbai – 400 102. … Respondents

MAMTA AMAR KALE Digitally signed by MAMTA AMAR KALE Date: 2025.04.22 17:09:44 +0530

Mr Vikas Tiwari a/w Mr Santosh Musale, for the Petitioner.
Mr Yogesh Dabke, APP, for the Respondent / State.

Coram: R.N. Laddha, J.
Date: 10 March 2025

P.C.:

. Heard Mr Vikas Tiwari, the learned Counsel appearing on behalf of the petitioner and Mr Yogesh Dabke, the learned Additional Public Prosecutor representing the respondent/State.

2. The petitioner in this case is arraigned as an accused in a private complaint bearing CC No.548/SW/2022. The complaint led to issuance of process for offences punishable under Sections 323, 341, 504 read with 34 of the Indian Penal Code.

3. The learned Counsel for the petitioner has drawn the Court's attention to respondent No.2's (original complainant) verification statement which is in the form of an affidavit. There was no examination of complainant made under oath by the learned Magistrate as required under Section 200 of the Code of Criminal Procedure, 1973 (CrPC).

4. According to Section 200 CrPC, before taking cognizance of the offence based on a private complaint, it is the responsibility of the Magistrate to examine the complainant and the present witnesses under oath. The substance of this examination must be recorded in writing and signed by the complainant, witnesses and the Magistrate. By catena of

decisions, the Supreme Court has observed that issuing process on a private complaint is a serious matter and the law provides safeguard in the form of examination of the complainant on oath as per Section 200 CrPC. The purpose of this examination is to ascertain the truth by the complainant under oath. Section 200 CrPC requires the Court to examine the complainant under oath and record substance of his examination in writing. The purpose of Section 200 CrPC is to determine the truthfulness of the complainant's claim.

5. In the instance case, it appears that respondent No.2/ complainant drafted the affidavit and filed before the Court. As such, it is not possible to consider the alleged verification of respondent No.2/complainant in the form of affidavit as examination of the complainant under Section 200 CrPC. Without examination of complainant u/s 200 CrPC, the Magistrate cannot proceed to exercise powers u/Ss 202, 203 and 204 CrPC.

6. In view of the above, the order of issuance of process 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 fulfil his duty under Section 200 CrPC, respondent No.2/complainant should not be held responsible

and should not have to endeavour any consequence due to the Magistrate's lapse. As a result, while there is justification for overturning the order to issue 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 30 June 2023, *qua* the petitioner, in CC No.548/SW/2022 pending before the learned Metropolitan Magistrate, Railway Mobile Court, Andheri, Mumbai, is quashed and set aside and the learned Magistrate is directed to record the complainant's verification as per Section 200 CrPC. After adhering to the stipulation of Section 200 CrPC, the learned Magistrate shall proceed to make a decision on the complaint in accordance with the law.

8. The petition, as such, stands disposed of.

(R.N. Laddha, J.)