

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

CRIMINAL WRIT PETITION NO. 4350 OF 2025

Devyani Annand Sarnaik

...Petitioner

Vs.

1. The State of Maharashtra and

2. Mr. Sameer Panchadhari

...Respondents

Adv. Manish Bohra a/w Adv. Bhavi Kapoor	Advocate for the Petitioner
Mr. H. J. Dedhia	APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 13th AUGUST 2025

P. C. :-

1. Heard learned Advocate Shri Manish Bhora for the Petitioner-accused and learned APP for the Respondent-State.

2. Initially, in the year 2014, the Respondent No. 2 has filed complaint for an offence punishable under Section 138 of the Negotiable Instruments Act before the Court of JMFC Pune. The process was issued on 15.03.2014. On account of territorial jurisdiction, it was transferred to the Court of the Metropolitan

Magistrate, Mumbai. Now it is turn of the Metropolitan Magistrate again to return it to the Court of the JMFC Pune by taking cognizance of the Negotiable Instruments (Amendment) Second Ordinance, 2015. This was order dated 12.01.2016, on page no. 21.

3. As on today, the case is pending before the Court of JMFC, Pune and now the matter is part heard. On this background, this petition is filed. A prayer is for quashing of the proceedings. It is for the reason that while issuing the process, an inquiry under Section 202 of the Criminal Procedure Code is not carried out. My attention is invited to the following documents:-

(i) Typed copy on page no. 22-A dated 15.03.2014 and

(ii) order by way of rubber stamp of the same date on roznama, page no. 41.

4. In order to buttress his submission, an inquiry under Section 202 of the Criminal Procedure Code is essential, learned Advocate Mr. Bora relied upon the observations in case of :-

(i) *Expeditious Trial of Cases under Section 138 of NI Act, 1881, in RE¹*., observations in para no. 11, para no. 24.2.

¹ (2021) 16 SCC 116

(ii) *Vishwakalyan Multistate Credit Co-op. Society Ltd.*

*Vs. Oneup Entertainment Private Limited*²

observations in para nos. 3 and 4 of the said order.

(iii) *Bansilal S. Kabra Vs. Global Trade Finance Limited*

*and Anr.*³, observations in para nos. 1, 8 and para no.

13.

(iv) In order to refute the contention that mere

participation in the trial in spite of this lacuna, he

relied upon the observations in case of *State of Orissa*

Vs. Mamta Mohanty, para no. 20.

5. It is true that from these judgments, in the year 2021, for the first time, the Constitution bench of the Supreme Court has clarified that an inquiry under Section 202 of the Criminal Procedure Code is mandatory also in the complaint under Section 138 of the Negotiable Act. Other judgments of the Hon'ble Supreme Court are of the year 2023. Whereas Full bench of this Court in the year 2024 has also held that this is mandatory. It is on the basis of the view taken by the Constitution bench. In para no. 2, the full bench has taken a note of

2 (2023) SCC Online SC 1749

3 (2024) SCC Online Bom 416

two different opinions. On 09.07.2010, Justice V. M. Kanade has taken a view that amendment is directory, whereas Justice S. C. Dharmadhikari has taken a view that it is mandatory. That is why the issue was referred to the larger bench, and it is decided accordingly.

6. The question is when the process was issued in the year 2014 which view prevailing at that time. According to the learned Advocate Shri Bohra, the amendment in Section 202 of the Criminal Procedure Code was carried out in the year 2006 and that was carried out by the parliament and hence it is binding on all the Courts. For the two reasons, I am not entertaining this petition.

- (i) When the impugned order on 15.03.2014 was passed, it cannot be said that there was one view taken by this Court, there were two different views. Even though, the amendment was in force in the year 2006, still two learned Judges of this Court have taken a different view. The view taken that inquiry is directory was not subscribed by the Constitution bench, but the fact there was no clear pronouncement in respect of the interpretation of law. Hence, no fault can be found out in

the impugned order.

- (ii) It is true that if the order is bad in inception, just because the objection taken at a later stage, it will not amount to sanctifying the lacunae which occurred earlier. But it altogether depends upon what kind of lacuna is pointed out. If such lacuna goes to the root of the matter, so to say, the jurisdiction, then participation in the trial does not legalize the lacuna. In this case the lacuna pertains to not conducting an inquiry under Section 202 of the Criminal Procedure Code. This lacuna is not of such a kind as to go to the root of the jurisdiction.

For this reason, I am not in favour of the Petitioner.

7. The learned Advocate Shri Bohra has tried his level best to convince me in a very lucid manner, but I am unable to subscribe to his views. This petition is filed belatedly, when the evidence has already started. So I am not in favour of entertaining the petition.

8. **The Writ Petition is dismissed. It is disposed of.**

[S. M. MODAK, J.]