



Judgment

466 wp726.24

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO.726 OF 2024

Pravin s/o Kishor Nawandar,
aged about 35 years, occupation: self
employed (business) r/o Row
House No.12/1, Eknathpuram, Sai
Nagar, Behind Ambience
Showroom, Shankar Nagar,
Amravati. **Petitioner.**

:: V E R S U S ::

1. Pramod s/o Premsukhdas
Chandak, aged about 50 years,
occupation business, r/o near Ram
Mandir, Civil Lines, Khamgaon,
district Buldhana.

2. ~~State of Maharashtra, throughout~~
~~Assistant Public Prosecutor (APP)~~
~~Khamgaon, district Buldhana.~~ **Respondents.**

As per court's order
dt.9.9.24 R-2
is deleted

Shri Parvez Mirza, Counsel for the Petitioner.
Shri Amit Bhate, Counsel for Respondent No.1.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 07/08/2025
PRONOUNCED ON : 10/09/2025

JUDGMENT

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1. By this petition, the petitioner is seeking quashing and setting aside order dated 16.11.2017 passed below Exh.1 by learned Judicial Magistrate First Class, Court No.5, Khamgaon in Summary C.C.No.1145/2016 issuing process against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act (the NIA) and order dated 5.7.2024 passed below Exh.39 by learned Judicial Magistrate First Class, Khamgaon issuing bailable warrant against the petitioner. The petitioner is also seeking quashing and setting aside the complaint.

2. Facts of the case are as under:

The respondent No.1 (the complainant) filed complaint under Section 138 of the NIA on an allegation that the complainant is proprietor of “Pramod Premsukhdas Chandak” a firm which deals with agricultural produce. The petitioner represented that he is

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dealing with the said business and entered into business transaction with the complainant by purchasing a pulse gram of 211.30 quintals worth of Rs.17,33,614/- vide bill No.808. On 6.2.2016, he again purchased 231.70 quintals pulse grams worth of Rs.19,14,844/- vide bill No.810 and 212.30 quintals on 9.2.2016 of Rs.18,03,486/- vide bill No.818. Though the petitioner agreed to repay the amount, he did not pay the amount and, therefore, the demand was made. On the demand, the petitioner allegedly paid Rs.5.00 lacs, out of Rs.55.00 lacs by RTGS in the account of the complainant. Against Rs.50.00 lacs, he issued the cheques bearing No.000111 dated 1.3.2016 of Rs.10.00 lacs; 000112 dated 15.3.2016 of Rs.10.00 lacs; and 000114 dated 1.5.2016 of Rs.30.00 lacs drawn on ICICI Bank, branch at Amravati. The complainant deposited the said cheques, but the same were returned “unpaid” by reason “funds insufficient”. Thereafter, the

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complainant issued notice to the petitioner dated 18.6.2016. On receipt of the notice also, the petitioner has not repaid the amount and, therefore, the complainant filed complaint under Section 138 of the NIA.

3. Learned JMFC at Khamgaon took cognizance and after recording verification, issued process against the petitioner. The petitioner preferred an application for recalling of order of issuance of process, but the same was rejected. The order was challenged by the petitioner before Additional Sessions Judge at Khamgaon by preferring Criminal Revision No.36/2024, but the same was also dismissed. Therefore, the present writ petition is filed by the petitioner on the ground that without complying under Section 202, learned Magistrate has issued the process which is completely abuse of process of

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law. The enquiry under Section 202 of the Code was mandatory as the petitioner is residing at a place beyond territorial jurisdiction of the Magistrate.

4. The another ground raised is that the order of issuance of process is without recording satisfaction and, therefore, the order passed by learned Magistrate confirmed by learned Additional Sessions Judge requires to be quashed and aside.

5. Heard learned counsel Shri Parvez Mirza for the petitioner and learned counsel Shri Amit Bhate for the respondent No.1.

6. Learned counsel for the petitioner reiterated that no enquiry was conducted under Section 202 of the Code which is mandatory requirement as the petitioner resides outside the jurisdiction of the Magistrate before whom the complaint is made. Learned Magistrate has also not

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recorded his satisfaction before issuance of process and mechanical order was passed. In view of that, the orders passed by the Magistrate deserves to be quashed and set aside.

7. In support of his contentions, learned counsel for the petitioner has placed reliance on following decisions:

1. **Ramachandra Venkataramanan vs. M/s.Shapoorji Pallonji and Company Ltd., reported in AIR OnLine 2019 Bom 261;**
2. **Aroon Poorie vs. Jayakumar Hiremath, reported in (2017)7 SCC 767;**
3. **Expeditious Trial of Cases under Section 138 of the NI Act, 1881, suo motu W.P. (Cri) No.2/2020, reported in (2021)16 SCC 116;**
4. **Viraf N.Chiniwala of Bombay vs. Amy N.Irani and anr, reported in 2014 SCC OnLine Bom 334;**
5. **Ekveera Jewellers Anturli, Jalgaon vs. Shaunak Deepak Kulkarni, reported in AIR OnLine 2023 Bom 2354, and**

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6. Bansilal S.Kabra vs. Global Trade Finance Limited and anr, reported in 2024 SCC OnLine Bom 416.

8. *Per contra*, learned counsel for the respondent N0.2/complainant submitted that learned Magistrate has considered verification and recorded satisfaction and, thereafter, issued process. He submitted that in the decision of the Hon'ble Apex Court in the case of **Expeditious Trial of Cases under Section 138 of the NI Act, 1881, suo motu W.P. (Cri) No.2/2020** *supra* it is held that the enquiry shall be conducted on receipt of complaints under Section 138 of the NIA to arrive at sufficient grounds to proceed against the accused. For conducting the enquiry under Section 202 of the Code, evidence of witness on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict enquiry to examination of

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documents without insisting for examination of witnesses. Thus, on the basis of documents, learned Magistrate has issued the process and no interference is called for.

9. On hearing both the sides and perusing the complaint, it reveals that the impugned cheques are issued against the legal and enforceable debt arising out of business transactions. As far as mandatory requirement is concerned, recital of the complaint shows that the cheques were issued against discharge of enforceable debt arising out of business transaction as the petitioner has obtained the goods on credit and issued the cheques against the payment which are dishonoured. On dishonouring of the cheques, notice was sent to the petitioner which is received back with endorsement "Not Claim". The notice appears to be issued on given address.

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10. The core of submissions of learned counsel for the petitioner is that enquiry contemplated under Section 202 of the Code is mandatory in cases the accused resides outside the jurisdiction of the Magistrate before whom the complaint is made, but when the case entirely depends on documents particularly in complaint filed under for the offence under Section 138 of the NIA, there is need to adduce evidence even an affidavit filed by the complainant would suffice the purpose of enquiry. Learned Magistrate has not conducted the enquiry as per the submissions made by learned counsel and, therefore, the entire proceeding requires to be quashed and set aside.

11. Considering the submissions made by learned counsel for the respective parties, it would be appropriate to refer Section 202 of the Code, which reads as under:

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“202. Postponement of issue of process. (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192 may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made, -

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

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(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath :Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Court on an officer-in-charge of a police station except the power to arrest without warrant”.

12. Section 202 of the Cr.P.C. speaks about postponing the issuance of process against the accused in

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case he resides beyond the area in which the Magistrate before whom the complaint is made exercises his jurisdiction. In that case, the Magistrate either inquire into the case himself or direct an investigation to be made by the police officer for the purpose of deciding whether there are sufficient grounds for proceedings or not. Whether the inquiry as contemplated under Section 202 of Cr.P.C. is mandatory is the question arise for consideration.

13. This aspect was dealt with by the Hon'ble Apex Court in the case of **Abhijit Pawar vs. Hemant Madhukar Nimbalkar, reported in (2017)3 SCC 528** wherein it has been observed that Section 202 of the Code was amended in the year by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22nd June, 2006 by adding the words 'and shall, in a case where the

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accused is residing at a place beyond the area in which he exercises his jurisdiction'. There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far off places in order to save them from unnecessary harassment.

14. Thus, in those cases, where the accused is residing at a place beyond territory in which the Magistrate exercises jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing process so that false complaints are filtered and rejected. It is further held that requirement of conducting the enquiry or directing investigation before issuing process is, therefore, not an empty formality. What kind of “enquiry” is needed under this provision has also been explained in the case of **Vijay**

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Dhanuka vs. Najima Mamtaj, reported in (2014)14 SCC 638 wherein it has been held that, “no specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code”. The amended provision cast an obligation on the Magistrate to apply his mind carefully. The allegations in the complaint, when considered along with the statements recorded or the enquiry conducted thereon, would *prima facie* constitute the offence for which the complaint is filed.

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In the above said judgment, it has been further held that, “Section 202 of the Code, *inter alia*, contemplates postponement of the issue of the process “in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction” and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not”.

15. In the case of **Expedition Trial of Cases under Section 138 of the NI Act, 1881** *supra*, requirement to conduct enquiry of direct investigation before issuing process where the accused is residing beyond territorial

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jurisdiction of the Magistrate concerned held mandatory - purpose is to protect innocent persons residing at far off places from being harassed and culled out following parameters which are as under:

1) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.

3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of

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the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

It has been further held that merely because the accused is residing outside the jurisdiction of the court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record and, thereafter, the Hon'ble Apex Court by referring Section 145 of the NIA, observed that on a holistic reading of Section 145 along with Section 202, we hold that Section 202 (2) of the Code is inapplicable to complaints under Section 138 in respect of

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examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If

the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202.

16. Thus, by referring the decisions in the cases of **Abhijit Pawar** *supra* and **Vijay Dhanuka**, the Hon'ble Apex Court in **Expeditious Trial of Cases under Section 138 of the NI Act, 1881** *supra* held that Section 202 (2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath.

In view of the said observations of the Hon'ble Apex Court, the ground raised by learned counsel for the

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petitioner, that no enquiry was held mandatory under Section 202, is not sustainable.

17. The another ground raised by the petitioner is that no satisfaction is recorded while passing an order of issuance of process and learned Magistrate has passed mechanical order. Although examination of all witnesses is not required to comply the mandate under Section 202 of the Code, the minimum requirement of tendering evidence, affidavit of the complainant, consideration of the documents making out an offence under Section 138 of the NIA or assignment of the requisite reasons for dispensing with a detailed enquiry would still be necessary where accused resides beyond jurisdiction of the Magistrate.

18. This Court in the case of **Shivshankar Shrikrushna Dhole vs. State of Maharashtra, thr.AGP**

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Akola, reported in AIR OnLine 2021 Bom 2149 observed that merely reading of the complaint and verification statement on oath given by the complainant while issuing process would not constitute sufficient compliance with mandatory requirement of Section 202 of the Code, particularly in the teeth of law laid down by the Hon'ble Apex Court in constitution bench judgment.

19. The offence under Section 138 of the NIA, depends upon the documents and the proof requires examination of the witnesses. Even, the Magistrate is left with discretion to dispense with the enquiry, he should assign reasons for the same as to why he is restricting himself to the examination of the documents.

20. Keeping in mind the aforesaid aspects, if the impugned order is examined, apparently, it shows requisite reasons for dispensing with the enquiry are not

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mentioned. The satisfaction behind the issuance of order is also not recorded. Resultantly, the order bereft of the mandate of Section 202 of the Code.

21. In this view of the matter, the writ petition deserves to be allowed by remanding the matter to the trial court. Hence, I proceed to pass following order:

ORDER

(1) The Writ Petition is **allowed**.

(2) The matter is remanded back to learned Judicial Magistrate First Class, Court No.5, Khamgaon and learned Magistrate shall proceed from the Stage of Section 202 of the Code.

(3) Learned Magistrate may conduct the enquiry under Section 202 of the Code.

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(4) The evidence of the witnesses on behalf of the complainant may be permitted to be taken on affidavit.

(5) Learned Magistrate may restrict the enquiry to the examination of the documents without insisting for examination of the witnesses by assigning adequate reasons for dispensing with the enquiry.

(6) The procedure under Section 202 of the Code shall be conducted as expeditiously as possible in any case within 2 months from the date of receipt of writ of this order.

Petition stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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