

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 85 OF 2026

Rahul Madhukar Bhandare

... Petitioner

Versus

Aditya Tushar Suryawanshi and another

... Respondents

Mr. Dilip Bodake a/w Mr. Sharad Bhosale a/w Mr. Amar Dhumal and Mr. Mohsin Khan, for the Petitioner.

Mr. Anand S. Shalgaonkar, A.P.P. for Respondent No.2 – State.

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CORAM : M. M. SATHAYE, J.

DATE : 25th February 2026.

P. C. :

1. Heard learned counsel for the Petitioner-accused. Perused the record.
2. By this petition under Article 227 of the Constitution of India, the Petitioner is challenging the judgment and order dated 20.09.2025 passed by Additional Sessions Judge, Wai in Criminal Revision Application No.41 of 2023. By the said impugned order, Revision Application filed by the Petitioner/accused against order of issuance of process (for offence punishable under section 138 of the Negotiable Instruments Act, 1881) by the concerned magistrate, was dismissed.
3. Learned counsel for the Petitioner, firstly submitted that, there is no verification of the complaint and without verification as contemplated under section 200 of the Code of Criminal Procedure, 1973 ('CrPC' for short),

Magistrate could not have issued process. He submitted that issuance of process is not a mechanical action but application of mind is expected. He relied on the following judgments in support of his contention;

- i) Sashidhar Jagdishan versus State of Maharashtra and Others, [2025 (4) Bom. C.R. (Cri.) 553];
- ii) M/s. JM Laboratories and others versus State of Andhar Pradesh and another, in Criminal Appeal No.-- of 2025, (Arising out of SLP (Cri.) NO.5067 of 2024).

4. Learned Counsel for the Petitioner further submitted that demand notice under the Negotiable Instruments Act, was not served through registered/speed post and therefore, process could not have been issued without verifying whether demand notice is received by the Accused or not.

5. I have perused the order dated 22.07.2022 passed by the Judicial Magistrate First Class, Wai (issuing process) and the impugned order by which Revision Application was dismissed.

6. At the outset, it is necessary to note that though ground of service of demand notice was not taken in Revision Application, the Revisional Court has considered it as can be seen from paragraph 10 onwards.

7. Perusal of section 138 of the Negotiable Instruments Act indicates that proviso (c) provides that nothing contained in section 138 shall apply unless drawer of cheque fails to make payment of the amount to the payee or, as the case may be, to the holder in due course of the cheque, within 15 days of the 'receipt of the said notice'. Said section or proviso does not require service of notice only through 'registered post or speed post'. Revisional court has

considered that complainant has mentioned in the complaint that demand notice was issued through courier and affidavit of Mr. Sunil Murlidhar Adhav, the authorized person on behalf of the courier services is considered.

8. Judgment of the Hon'ble Apex Court in the case of **M/S. Sil Import, Usa Vs. M/s. Exim Aides Silk Exporters [AIR 1999 SC 1609]** was pressed into service by the Complainant before the Revisional Court to contend that issue of technology advancement and its application must be considered and notice envisaged in proviso to section 138 of the Negotiable Instruments Act transmitted by Fax (in that case) would be compliance with the legal requirement. Observations of the Hon'ble Supreme Court in paragraph 7 of the judgment that there may be other modes of service such as service by courier, fax or service by electronic mode, is also pressed into service.

9. In that view of the matter, there is no merit in the submission that service ought to have been completed by registered post or speed post and issuance of process can not be faulted on that ground.

10. So far as argument about absence of verification and compliance with section 200 of Cr. P.C is concerned, certified copy of Roznama is placed on record which is marked 'X' for identification. Roznama indicates that on 21.04.2022, the matter was adjourned for verification by the complainant. The complainant has already affirmed an affidavit on 16.04.2022 alongwith the complaint and there is an endorsement on complaint that it be put up for verification. Endorsement is signed by the Magistrate on 21.04.2022. Certified copy of Roznama further shows that, thereafter on 22.07.2022 the complainant and his Advocate were present and the verification was recorded.

11. In the light of aforesaid record, when the order of issuance of process by the Magistrate is perused, it is seen that the Magistrate has perused the complaint and documents filed on record and verification statement is recorded under section 200 of the Cr.PC. The Magistrate heard Advocate for the complainant and by clear and detailed order, recorded his satisfaction that sufficient ground for proceeding against the Petitioner-accused is made out.

12. In the teeth of the record as discussed above, in my view, there is sufficient compliance with section 200 of CrPC. It cannot be said that the Magistrate has issued process mechanically. It is also clear that verification was recorded on 22.07.2022.

13. So far as judgment of **Sashidhar Jagdishan** (supra) is concerned, it was held that issuance of process 'before verification' is improper and, therefore, impugned order was set aside and it was provided that Magistrate is free to proceed with the matter by first recording verification of the complainant and then passing appropriate order. The facts in the present case are clearly distinguishable because it is found on facts that verification was recorded and thereafter process was issued. Therefore, the said judgment will not advance the case of the Petitioner.

14. So far as the judgment of **M/s. JM Laboratories and others** (supra) is concerned, there is no dispute about proposition of law that the order of issuance of process is not empty formality and Magistrate is required to apply his mind. The Hon'ble Supreme Court in paragraph 9 has held that, in that case, no reasons even for the namesake were assigned by the Magistrate. In the present case, however, reasons are recorded before issuing process and

satisfaction is also recorded. Therefore the said judgment will not advance the case of the Petitioner in principle.

15. In that view of the matter, there is no merit in Petition. There is no illegality or perversity in the impugned order. There is no need to interfere with the issuance of process, duly confirmed by the Revisional Court.

16. **Writ Petition is accordingly dismissed.** Needless to mention that observations in this order are limited to deciding this Writ Petition and rival contentions of all parties are kept open for decision in accordance with law at the time of Trial.

17. All concerned to act on duly authenticated or digitally signed copy of this order.

[M. M. SATHAYE, J.]