



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.123 OF 2025**

Deepak Dulhani	...	Petitioner
versus		
Crompton Greaves Consumer Electricals Ltd. and Anr.	...	Respondents

Mr. Pritam P. Runwal with Mr. Anil B. Khopde, for Petitioner.
Mr. Siyad Madon with Ms. Anjali Gupta i/by King Stubb and Kasiva, for
Respondent No.1.
Mr. A.D.Kamkhedkar, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 22 JANUARY 2026

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
2. The challenge in this Petition is to an order dated 20 April 2019 passed by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, whereby process was ordered to be issued against the Petitioner for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. By a subsequent order dated 12 February 2020, the learned Magistrate directed the release of the Petitioner – accused on bail, subject to deposit of 20% of the cheque amount towards the interim compensation to the complainant. The legality, propriety and correctness of the latter order is also called in question.

3. Shorn of superfluities, the background facts necessary for the determination of this Petition can be summerized as under :

3.1 Respondent No.1 Company is incorporated under the Companies Act, 2013. It is, inter alia, engaged in the business of manufacturing of electrical products. The Petitioner had placed orders for supply of various electrical products manufactured by the Respondent No.1. Accordingly, Respondent No.1 had sold and delivered goods to the Petitioner. An amount of Rs.24,33,740.97 was outstanding. Towards repayment of the said amount, the accused had drawn a cheque payable on 31 October 2018 on HDFC Bank, Konda Kolhapur. Upon presentment, the said cheque was returned unencashed with the remarks 'payment stopped by the drawer'. As the Petitioner committed default in payment of the amount covered by the cheque, despite service of the statutory notice, the complaint came to be lodged for an offence punishable under Section 138 of the N.I.Act, 1881.

3.2 By the impugned order dated 20 April 2019, after perusal of the complaint, affidavit of verification and documents, learned Metropolitan Magistrate issued process against the Petitioner for an offence punishable under Section 138 of the N.I.Act, 1881.

3.3 As noted above, by the subsequent order dated 12 February 2020, while releasing the accused on bail, learned Magistrate directed the accused to deposit 20% of the amount covered by the cheque towards interim

compensation under Section 143-A of the Act, 1881.

4. Mr. Runwal, learned Counsel for the Petitioner, submitted that the order of issue of process itself was completely vitiated as the learned Magistrate straightway issued process under Section 138 of the Act, 1881, without conducting an inquiry as mandated by Section 202(1) of the Code of Criminal Procedure, 1973, though the accused has been residing at a place beyond the local limits of the jurisdiction of the learned Magistrate. In such a situation, as mandated by Section 202(1) of the Code, 1973, it was incumbent upon the learned Magistrate to postpone the issue of process and either inquire into the case himself or direct an investigation to decide whether or not there was sufficient ground for proceeding. It was submitted that, from the perusal of the impugned order, it appears that the learned Magistrate did not at all advert to the said fact and mechanically issued the process.

5. To lend support to this submission, Mr. Runwal placed reliance on a decision of a learned Single Judge of this Court in the case of Rainbow Papers Limited and Ors. V/s. State of Maharashtra and Anr.¹.

6. Mr. Runwal next urged that, the direction for the deposit of 20% of the amount covered by the cheque towards the interim compensation under Section 143-A of the Act, 1881, also suffers from the legal infirmity. The learned Magistrate has not at all examined the issue of justifiability of such

1 2021 ALL MR (Cri) 3527

direction to deposit 20% of the amount covered by the cheque. Such direction could not have been issued without evaluating, albeit prima facie, merits of the complainant's claim and the defence of the accused. To this end, reliance was placed on a judgment of the Supreme Court in the case of **Rakesh Ranjan Shrivastava V/s. The State of Jharkhand and Anr.**²

7. Mr. Madon, learned Counsel for the Respondent No.1 – complainant, supported the impugned order. It was submitted that from the perusal of the order dated 20 April 2019 issuing process against the accused, it becomes evidently clear that the learned Magistrate did conduct an inquiry as envisaged by sub-section (1) of Section 202 of the Code, 1973. It was submitted that the learned Magistrate not only perused the complaint and the affidavit of verification, but even pre-cognizance evidence and documents and, thereafter, recorded that the the complainant had complied with all necessary formalities before filing the complaint. Such an order, which reveals the conduct of an inquiry, as envisaged by sub-section (1) of Section 202 of the Code, 1973, cannot be interfered with for the sole reason that no formal order of postponement of the issue of process was passed.

8. In order to bolster up the aforesaid submission, Mr. Madon placed reliance on a judgment of a learned Single Judge of this Court in the case of Blackburn Metals V/s. M/s. Zep Engineering Works and Ors.³.

² 2024 ALL SCR (Cri) 680

³ Cri. Application (APL) No.1768 of 2019 dt. 6 Oct. 2021

9. As the very question of legality of the order of issue of process in breach of the mandate contained in Section 202(1) of the Code, crops up for consideration, it would be appropriate to delve into the said issue at the threshold.

10. Incontrovertibly, the Petitioner – accused is a resident of Gandhi Nagar, Kolhapur. In the complaint, it was asserted that the accused was residing at Gandhi Nagar, Kolhapur, and had drawn the cheque on an account maintained with HDFC Bank, Konda Branch, Kolhapur.

11. In view of the provisions contained in Section 202(1) of the Code, 1973, after it suffered an amendment by Act No.25 of 2025, with effect from 23 June 2006, in a case where the accused is residing at place beyond the area over which the Magistrate exercises his jurisdiction, the Magistrate shall 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.

12. The aforesaid provision contained in Section 202(1) has been construed to be mandatory and introduced with an object of preventing harassment of the accused, who reside at far off place, without a sufficient ground for proceeding, having been made out against them; which the inquiry after the order of postponement of the issue of process may facilitate to

decipher.

13. The question as to whether the amendment contained in Section 202 of the Code, applies to a complaint under Section 138 of the Act, 1881, need not detain the Court. In view of the authoritative pronouncement of the Constitution Bench of the Supreme Court in Suo Motu Writ Petition No.2 of 2020 in Expeditious Trial of Cases under Section 138 of NI Act, 1881, in Re:⁴, the question is no longer res-integra. The observations of the Supreme Court in paragraphs 10 to 12 read as under :

“10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23.06.2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See: Vijay Dhanuka & Ors. v. Najima Mamta & Ors.⁵, Abhijit Pawar v. Hemant Madhukar Nimbalkar and Anr.⁶ and Birla Corporation Limited v. Adventz Investments and Holdings Limited & Ors.⁷). There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of

4 (2021) 16 SCC 116

5 (2014) 14 SCC 638

6 (2017) 16 SCC 528

7 (2019) 16 SCC 610

the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been 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.

11. The learned Amici Curiae referred to a judgment of this Court in K.S. Joseph v. Philips Carbon Black Ltd & Anr.⁸ where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in Vijay Dhanuka (supra), Abhijit Pawar (supra) and Birla Corporation (supra), the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amicus.

12. Another point that has been brought to our notice relates to the interpretation of Section 202 (2) which stipulates that the Magistrate shall take evidence of the witness on oath in an inquiry conducted under Section 202 (1) for the purpose of issuance of process. Section 145 of the Act provides that the evidence of the complainant may be given by him on affidavit, which shall be read in evidence in any inquiry, trial or other

8 (2016) 11 SCC 105

proceeding, notwithstanding anything contained in the Code. Section 145 (2) of the Act enables the court to summon and examine any person giving evidence on affidavit as to the facts contained therein, on an application of the prosecution or the accused. It is contended by the learned Amici Curiae that though there is no specific provision permitting the examination of witnesses on affidavit, Section 145 permits the complainant to be examined by way of an affidavit for the purpose of inquiry under Section 202. He suggested that Section 202 (2) should be read along with Section 145 and in respect of complaints under Section 138, the examination of witnesses also should be permitted on affidavit. Only in exceptional cases, the Magistrate may examine the witnesses personally. Section 145 of the Act is an exception to Section 202 in respect of examination of the complainant by way of an affidavit. There is no specific provision in relation to examination of the witnesses also on affidavit in Section 145. It becomes clear that Section 145 had been inserted in the Act, with effect from the year 2003, with the laudable object of speeding up trials in complaints filed under Section 138. If the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. 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 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."

(emphasis supplied)

14. In paragraph No.21, the Constitution Bench had drawn, inter alia, the following conclusions :

“24.2 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.

24.3 For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of 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.”

(emphasis supplied)

15. In the case of **Bansilal S. Kabra V/s. Global Trade Finance Ltd. and Anr.**⁹ a Larger Bench was constituted to examine the question, whether the amendment in Section 202(1) of the Code, which contemplates an inquiry before the issuance of process by the Magistrate where the accused was residing outside the jurisdiction of the Court, is discretionary or mandatory. After advertng to the Constitution Bench Judgment in Suo Motu Writ Petition No.2 of 2020 (supra), and the practice directions issued by the High Court, the Full Bench of this court held that the question referred to the larger Bench was already answered by the Constitution Bench of the Supreme Court in the aforesaid terms. Yet, the nature of the inquiry in such a matter was

9 2024(2) Mh.L.J. (FB) 695

expounded by the Full Bench, as under :

“7.....However, we would like to only add, by taking note, that Chapter XV of the Code, which contemplates complaints to the Magistrate, which includes Section 202, intended to achieve twin objects; one being to enable the Magistrate to carefully scrutinize the allegations made in the complaint with a view to prevent a person named therein, as accused from being called upon to face unnecessary, frivolous or meritless complaint; and the other, to find out whether there is any material in existence, to support the allegations in the complaint. The Magistrate is therefore, duty bound to elicit all facts, having regard to the interest of the complainant, in absence of the accused, before he brings to book him for the accusations in the complaint. For forming an opinion to that effect, the Magistrate may himself hold an inquiry u/s. 202 of the Code, or direct investigation to be made by a police officer. We may also add that in a contingency, when he decides to conduct an inquiry, specifically against the persons residing outside his territorial jurisdiction, the inquiry must be aimed at ascertaining the truth or otherwise in the allegations made in the complaint. It is expected that the Magistrate shall not only rely upon the averments in the complaint, as it may many a times, contain unfounded allegations which require ascertaining of its veracity, before the process is issued, so as to separate the chaff from the grain. Before the Magistrate acts on the complaint, by issuing process against the person named as an accused therein, he shall satisfy himself about the existence of sufficient ground(s), for proceeding against him, particularly when he is residing outside his jurisdiction. The amended provision is aimed to prevent innocent persons

residing at far places, from harassment by unscrupulous persons, filing unfounded and false complaints. This would necessarily involve recording of statement of the complainant on oath, in form of verification statement or recording evidence of any witnesses produced by the complainant, in support of the allegations in the complaint, to find out whether a prima facie case for issuance of process has been made out. We must, however, clarify that this inquiry is restricted to, ascertaining the element of truth or falsehood of the allegations in the complaint, based on the material placed by the complainant before the Court, and the inquiry is limited only to this extent i.e. to find out, if there is any matter which calls for investigation.” (emphasis supplied)

16. In the case of Rainbow Papers Limited and Ors. (supra), on which reliance was placed by Mr. Runwal, after following the Constitution Bench judgment in the case of Suo Motu Writ Petition No.2 of 2020 (supra), the learned Single Judge quashed and set aside the order of issue of process as the mandatory inquiry under Section 202(1) of the Code, was not conducted.

17. The endeavour of Mr. Madon, to persuade the Court to sustain the legality of the impugned order of issue of process by placing reliance upon the judgment in the case of Blackburn Metals (supra), does not merit acceptance. First and foremost, it is imperative to note, in the said case, learned Single Judge proceeded on the premise that the order impugned in that case satisfied the requirement of inquiry as envisaged by Section 202(1) of the

Code. Secondly, the learned Single Judge was of the view that in the said case, the learned Magistrate had arrived at the requisite satisfaction on the basis of the material on record.

18. Even if one proceeds on the premise that the view taken by the learned Single Judge in the case of Blackburn Metals (supra), is in consonance with the Constitution Bench judgment in the case of Suo Motu Writ Petition No.2 of 2020 (supra), yet, it would be difficult to accede to the submission of Mr. Madon. Indeed, the Constitution Bench in the case of Suo Motu Writ Petition No.2 of 2020 (supra), has enunciated that, for the conduct of inquiry 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 the inquiry to examination of documents without insisting for examination of witnesses.

19. Yet, it would be difficult to accede to the submission of Mr. Madon, that the impugned order falls within the narrow window of the inquiry being restricted to examination of documents without insisting for examination of witnesses.

20. From the perusal of the impugned order of issuance of process, it appears that the learned Magistrate was not at all alive to the mandatory requirement of the holding of an inquiry where the accused was residing beyond the local limits of the jurisdiction of the learned Magistrate. The

impugned order nowhere gives an indication that, on account of the peculiar facts of the said complaint, learned Magistrate was of the view that the examination of the witnesses of the complainant was not warranted and inquiry qua the documents was sufficient to decide whether or not there was sufficient ground for proceeding.

21. In the absence of any indication in the order of issuance of process, an inference that, in the given case, the learned Magistrate restricted the inquiry under Section 202(1) of the Code to the examination of documents only, without insisting for examination of witnesses, cannot be drawn from general observation that the learned Magistrate 'perused the complaint along with the affidavit of verification and pre-cognizance evidence with document'. Such an approach would defeat the object of the provisions contained in Section 202(1) of the Code. Thus, the impugned order of issuance of process, being in violation of the statutory mandate contained in Section 202(1) of the Code, cannot be sustained.

22. As the very order of issuance of process deserves to be quashed and set aside, the court need not delve into the aspect of justifiability of the direction to deposit 20% of the amount covered by the subject cheque towards interim compensation under Section 143-A of the N.I.Act, 1888.

23. For the foregoing reasons, the Writ Petition deserves to be allowed.

24. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned order dated 20 April 2019 issuing process against the Petitioner for an offence punishable under Section 138 of the Negotiable Instruments Act, 1888, stands quashed and set aside.
- (iii) Resultantly, all subsequent orders in Complaint CC No.01/SS/2019 (New CC No.5401238/SC/2021) stand quashed and set aside.
- (iv) The learned Magistrate shall now pass an appropriate order afresh in accordance with law in Complaint CC No.01/SS/2019 (New CC No.5401238/SC/2021).
- (v) Rule made absolute in the aforesaid terms.
- (vi) No costs.

(N.J.JAMADAR, J.)