

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 414 OF 2025

Pravin Damji Rambhia
Rambhia Pravin Damji HUF
Age : 74 years, Occ: Business,
13A, Sumer Trinity Tower
Prabhadevi, Mumbai

...Applicant.

V/s.

1. State of Maharashtra

2. Mrs. Dipti Hitesh Shah
Through her constituted attorney
Heman Visanji Dedhia,
Having address at 1202,
Horizon Samyak Zaver Road,
Mulund West, Mumbai 400080.

...Respondents.

Adv. Jehangir Khajotia a/w Adv. Bhushan Gawale i/by Adv. Prem Avichal
for the Applicant.

Mr. Ashish I. Satpute A.P.P. for the Respondent- State.

Adv. Veena Nair a/w Adv. B. K. Bali, i/b Bali Associates for Respondent
No.2.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 12th DECEMBER 2025.

PRONOUNCED ON : 9th FEBRUARY, 2026.

JUDGMENT :-

1) Rule. Rule made returnable forthwith and heard finally with
the consent of the parties.

2) By the present Application under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, the Applicant seeks to quash and set aside the Order (Exh.1) dated 19th November, 2024 passed by the learned Additional Chief Judicial Magistrate, Kalyan in S.C.C. Case No. 12640 of 2024, whereby, the Additional Chief Judicial Magistrate Kalyan has issued process against the Applicant under Section 138 of Negotiable Instruments Act.

3) The Complainant's case is that as the Applicant was in need of financial assistance, the Complainant has advanced Rs. 10,00,000/- to the Applicant. The Complainant is stated to have raised the said amount with the help of his friends and family members. It is the contention of the Complainant that, the Applicant had agreed to repay the said amount in the month of July 2024. The Applicant issued a cheque bearing no. 142428 dated 3rd August, 2024 drawn on M/s. Saraswat Co-operative Bank Ltd. for the amount of Rs. 10,00,000/-. The said cheque, on being dishonored, the Complainant/Respondent No.2 herein filed a complaint under Section 138 against the Applicant.

4) The main contention of the Learned Advocate for the Applicant is that, the issue process Order dated 19th November, 2024 is passed without holding an enquiry as contemplated under Section 225 of the BNSS, 2023.

5) Learned Advocate for the Applicant submits that, the Order dated 19th November, 2024 is passed in violation of the requirement of

Section 225 of the BNSS. In support of his contention learned Advocate for the Applicant relied on the Judgment and Order of the *Hon'ble Supreme Court in Suo Motu Writ Petition (Crl) No. 2 of 2020, reported in (2021) 16 SCC 116*, to contend that, in cases where an accused resides beyond the area of jurisdiction of the Court it is necessary for the learned Court to postpone the issue of process against the accused and conduct an enquiry in the said matter. The Learned Advocate relied on the said Judgment to contend that Section 225 of BNSS (previously Section 202 of the Code of Criminal Procedure) makes it obligatory on the Learned Magistrate to conduct an enquiry for the purposes of deciding whether sufficient ground is made out to justify the issuance of process. That, under Section 202 of the Code of Criminal Procedure (after the amendment with effect from 23rd June 2006) and now Section 225 of the BNSS it is mandatory for a Magistrate to conduct an enquiry before the issuance of process in cases where accused resides beyond the area of jurisdiction of the Court. That, in the present case, a bare perusal of the complaint filed under Section 138 of the Negotiable Instruments Act, makes it clear that the complaint is filed before the Judicial Magistrate First Class, 1st Court at Kalyan, whereas the present Applicant, who is the accused, resides beyond the territorial jurisdiction of the said Court in as much as he resides at Prabhadevi. That, a perusal of the Order of issuance of process does not indicate that, an enquiry has contemplated under Section 225 of the BNSS was conducted.

6) The Learned Advocate for the Applicant further relied on the Judgment and Order of the Full Bench of this Court in the case of *Bansilal S. Kabra V/s Global Trade Finance Limited & Anr. reported in (2024) SCC OnLine Bom 416*.

7) The Learned Advocate appearing for the Respondent no. 2 has relied on the Judgment of this Court in the case of *Blackburn Metals V/s M/s Zep Engineering Works reported in (2021) SCC OnLine Bom 3330* to submit that, it is not necessary that, in each and every matter an enquiry ought to be conducted. He submits that, as long as the Order of issuance of process indicates that the complaint is verified, the documents are perused and the verification statement is available that would be sufficient compliance of Section 225 of BNSS erstwhile Section 202 of the Code of Criminal Procedure.

8) He placed reliance on the case of *Vishwakalyan Multistate Credit Co. Op. Society Ltd. V/s Oneup Entertainment Private Limited reported in (2023) SCC OnLine SC 1749*, to submit that, in suitable cases the Magistrate may restrict the enquiry to examination of documents without insisting for examination of the witness.

9) I have considered the arguments and perused the Judgments.

9.1) In the case of *Suo Motu Writ Petition (Crl.) No. 2 of 2020*, dated 16th March 2021 (*supra*) Supreme Court has observed as under:

INQUIRY UNDER SECTION 202 OF THE CODE IN RELATION TO

SECTION 145 OF THE ACT

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 and Ors. v. Najima Mamtaj and Ors., Abhijit Pawar v. Hemant Madhukar Nimbalkar and Anr. And Birla Corporation Limited v. Adventz Investments and Holdings Limited and Ors.) 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 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.

24. The upshot of the above discussion leads us to the following conclusions:

24.1) 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.

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.

9.2) In the case of *Blackburn Metals v/s M/s Zep Engineering Works and Ors.*, reported in (2021) SCC OnLine Bom 3330, this Court has observed that:-

15. In the case in hand, the learned Magistrate while issuing the process, has personally verified the complaint, perused the documents filed alongwith it and after taking into consideration the statement of Complainant on oath and upon hearing, learned Advocate for the Complainant at length held that there were sufficient grounds for proceeding against the accused. I have reproduced the order issue of process herein above. It shows that the learned Magistrate has not only verified the complaint and heard the Complainants' Advocates, but also perused the documents filed alongwith the complaint for obtaining satisfaction as to sufficiency of ground for proceeding under Section 202.

16. Thus, in consideration of the law laid down by this Court making a distinction between the complaint under Section 138 of the Act and complaints for offences under IPC, in the case of Rajul Ketan Raj

(supra) and Girish Dharmchand Chordiya (supra) and the order passed in Suo Motu Writ Petition (Cri) No. 02/2020 and in particular the observations made in Paragraph Nos. 10, 11 and 12 thereof, in my view herein order issue process passed by the learned Magistrate cannot be faulted with for want of inquiry contemplated under Section 202(1) of the Code. The complaint in question, was filed alongwith requisite documents namely invoices; delivery challans; transporters' receipts; copy of cheque dated 25th September, 2018; copy of statutory notice dated 17th October, 2018; copy of reply dated 31st October, 2018; copy of rejoinder reply dated 16th November, 2018. Therefore, though the accused Nos. 2, 3 and 4 were residing at a place beyond the territorial jurisdiction of the learned Magistrate, and although he did not postpone the issuance of process, order issue process shows that learned Magistrate has obtained requisite satisfaction, from the documents available on record as to sufficiency of the grounds for proceeding under Section 202 against the accused. In view of this matter and for the aforestated reasons, impugned order in Criminal Revision Application No. 79/2019 is quashed and set aside.

9.3) In the case of *Vishwakalyan Multistate Credit Co. Op Society Ltd. V/s Oneup Entertainment Private Limited*, (2023) SCC OnLine SC 1749, the Supreme Court has observed that :

3.....In paragraph 15 if the impugned judgment, the High Court held that for non-compliance with the mandate of Section 202 of the CRPC, the order issuing process is illegal. Therefore, the High Court has proceeded to set aside the order issuing process. However, no further direction was issued by the High Court to the learned

Judicial Magistrate to hold an inquiry under Section 202 of the CRPC.

4. We may note here that as far as complaints under Section 138 of the NI Act are concerned, this Court in *Suo Motu Writ Petition (Criminal) No. 2 of 2020* in the case of “*In Re : Expeditious Trial of Cases under Section 138 of N.I. Act, 1881*” has laid down the guidelines. In clause (3) of paragraph 24 of the said decision, the Constitution Bench has directed as under :

“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,”

9.4) In the case of, *Bansilal S. Kabra v/s Global Trade Finance Limited & Anr. (2024) SCC OnLine Bom 416*, this Court has observed that:

3).....Referring to the amendment in Section 202 of Code enforced with effect from 23/6/2006 vide Act No.25 of 2005. which made it mandatory for the Magistrate to conduct an inquiry before issuance of the process, in a case where the accused resided beyond the area of the jurisdiction of the Court, the diversion of opinion among the High Courts relating to the applicability of the said provisions to the complaints filed under Section 138 of the Act, was noted.

The amicus curiae advanced his submissions reflecting upon the imperative nature of the amendment and what is recorded in paragraph no.11, of the Constitution Bench decision, deserves a reproduction:-

"11 The learned Amici Curiae referred to a judgment of this

Court in K.S. Joseph Vs. Philips Carbon Black Ltd, & Anr, 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 Amici."

4) *Another aspect, in order to curtail the delays in conclusion of the trials under the Act of 1881, which was adverted to, is in relation to interpretation of Section 202(2) of the Code, which expected the Magistrate to record evidence of the witness on oath, in an inquiry to be conducted u/s.202(1). before issuance of the process, and though in the present reference, we are not concerned with the said issue, we must note that, on this aspect, the Apex Court has held, that in the wake of Section 145 of the Act, the evidence of witness on behalf of the complainant, shall be permitted on affidavit and there is no reason for insisting on the evidence on oath. Thus, if the Magistrate prefers to hold an inquiry himself, it shall not be imperative for him to examine the witness on oath and in suitable cases, he may examine the documents for satisfying himself, as to the sufficiency of the grounds for proceeding u/s. 202 of the Code.*

6) *In order to have implementation of the orders issued by the Constitution Bench in suo motu Writ Petition dated 16/4/2021, the*

Registrar General of the Bombay High Court has also issued a circular on 27/1/2022, clearly issuing the following directions:-

"2 On receipt of any complaint under Section 138 of N.L. Act, wherever it is found that any accused is resident of the area beyond the territorial jurisdiction of the magistrate concerned, an inquiry shall be conducted by the magistrate to arrive at sufficient grounds to proceed against the accused as prescribed under Section 202 of Cr.PC.

3 While conducting any such inquiry under section 202 of Cr.PC, the evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the magistrate may restrict the inquiry to examination of documents without insisting for examination of witnesses for satisfaction as to the sufficiency of grounds for proceeding under the said provision".

7) In our considered view, the question, referred to the larger Bench, is already answered by the Constitution Bench of the Apex Court as above, and therefore, we do not deem it necessary to answer the reference.

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.

10) Perusal of section 225 of the BNSS (erstwhile section 202 of Cr.PC), would indicate that, in a complaint once it is noticed that the accused is residing beyond the territorial jurisdiction of the concerned Court, the issue of process is to be postponed and an inquiry is required to be conducted by the magistrate to decide if there is sufficient ground to proceed against the accused. The enquiry may be conducted by the Magistrate himself or investigation may be directed to be made by a Police Officer. It is also permissible that, at the time of conducting the enquiry, the evidence of witnesses on behalf of the Complainant may be permitted to be taken on an Affidavit. In suitable cases, the Magistrate may restrict the enquiry to examination of documents without insisting for examination of witnesses for satisfaction as to the sufficiency of grounds for proceeding under the said provision.

10.1) The purpose and object of section 225 of the BNSS is to ensure that the allegations made in the complaint against the accused are carefully scrutinized. The objective, is to ensure that, the accused do not face unnecessary, frivolous or meritless complaint and also to enquiry as to whether there is any material to support the allegations in the complaint.

The fact that, the enquiry as contemplated under section 225 of the BNSS is conducted, should be reflected in the order. The said enquiry and satisfaction shall be clearly reflected in the Order of issuance of process.

10.2) In short, in cases where the accused is residing beyond the area in which the Magistrate exercises his jurisdiction the Magistrate shall at the first instance postpone the issuance of process against the accused and either enquire the case himself or direct investigation to be made by the Police Officer or by such person as he thinks fit. The purpose and object of the section as more clearly enunciated by the Hon'ble Supreme Court is to ensure that the provision of law is not be misused to harass and intimate people who are beyond the jurisdiction of the Court. What is contemplated is that, the enquiry should be done when an accused resides beyond the jurisdiction of the Court. The fact that the enquiry was done wherein the said aspect was considered should be reflected in the Order of issuance of process. The enquiry is contemplated only to rule out the possibility of complainant, either for his own benefit or convenience not narrating the entire facts of the case.

11) Considering the above facts I am of the opinion that, the order of issuance of process does not indicate where an enquiry as contemplated under Section 225 of the BNSS was conducted. Though the Order of issuance of process states that, the complaint, verification, statements and documents have been perused, it does not make any reference to the

enquiry which is to be conducted when the accused resides beyond the jurisdiction of the Magistrate. The Order does not indicate as to whether the said aspect had been taken into consideration at the time of passing the Order of issuance of process.

12) In view thereof, I am inclined to set aside the Order of issuance of process dated 19th November, 2024 with a direction to the trial Court to proceed from the stage of Section 225 of the BNSS. Needless to say that, the trial Court will be guided by the directions issued by the Constitution Bench.

12.1) The inquiry under Section 225 of the BNSS shall be conducted as expeditiously as possible and in any event within a period of one month from the date on which the copy of this Order is received by the learned trial Court.

13) Criminal Application is allowed in terms of prayer clause (c).

(RANJITSINHA RAJA BHONSALE, J.)