
(2014) 07 BOM CK 0330

In the Bombay High Court

Case No : Criminal Application No. 5451 of 2013

Ashok and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202 — Penal Code, 1860 (IPC) -
Section 323, 324, 326, 34, 504

Citation : (2015) ALLMR(Cri) 1765

Hon'ble Judges : V.M. Deshpande, J.

Bench : Single Bench

Advocate : V.J. Dixit, Sr. Counsel and A.N. Nagargoje, Advocate, for the Appellant; V.H. Dighe, APP, for the Respondent

Final Decision : Allowed

Judgement

V.M. Deshpande, J.?Rule. Rule is made returnable forthwith. Heard finally by consent of parties. By the present application the applicants are questioning the order of issuance of process against them by the learned Judicial Magistrate First Class, Court No. 2, Newasa in Criminal O.M. Application No. 152/2012 then registered as RTC No. 189/2012 challenging the order of issuance of process for the offence punishable u/s. 323, 324, 504, 506(2) read with section 34 of Indian Penal Code.

2. I heard Shri V.J. Dixit learned Senior counsel alongwith Shri A.N. Nagargoje for the applicant, Shri Rs. Pawar learned counsel for the respondent No. 2 and Shri V.H. Dighe learned Additional Public Prosecutor for the respondent No. 1 State in extenso. Though the learned Senior Counsel pointed out various litigations in the nature of criminal complaints filed inter se, for the just decision of the present application reference to those are not necessary.

3. Suffice it to say that on 9.4.2012, the respondent No. 2 filed a private complaint in the Court of Judicial magistrate First Class, Newasa for the offence punishable u/s. 326, 324, 323, 504, 506 read with section 34 of Indian Penal

Code against the present applicants vide RTC No. 189/2012 (Cri. O.M.A. No. 152/2012). The copy of the said complaint is annexed alongwith present application at Exh. "C" which shows that the date of the incident is 18.3.2012 while the complaint is presented on 9.4.2012.

4. Undisputedly, the present applicants who are the accused in the said complaint are residents of Nirmalnagar, Bhistibaug Naka, Ahmednagar and admittedly they are residing beyond the territorial jurisdiction of the Judicial Magistrate First Class Court No. 2, Newasa. Even the learned counsel for respondent No. 2/complainant has affirmed the said fact.

5. The main arguments of the learned Senior counsel for the applicant is that, before issuing process on 11.7.2012 the learned Magistrate has not conducted inquiry as envisaged under Section 202 of the code of Criminal Procedure since the applicants were residents of beyond the territorial jurisdiction of learned Magistrate. Learned Senior Counsel for the applicant placed reliance on a reported decision of Hon"ble Apex Court reported in National Bank of Oman Vs. Barakara Abdul Aziz and Another, .

6. Learned counsel for the respondent No. 2/original complainant has also agreed that the learned magistrate before issuing process has not conducted inquiry either by himself or by police machinery. Hence, by consent the order dated 11.7.2012 passed by the Judicial Magistrate First Class, Court No. 2, Newasa in RTC No. 189/2012 (Criminal O.M. Application No. 152/2012) issuing process against applicants is hereby quashed and set aside.

7. Learned Judicial Magistrate First Class Court No. 2, Newasa is directed to pass fresh orders following the provisions as envisaged under section 202 of Code of Criminal Procedure. Learned Magistrate shall pass fresh orders after complying with the procedure laid down in Section 202 of Cr.P.C. within a period of one month from the date of receipt of this order. With these observations present application is allowed and rule is made absolute in above terms. No costs.