

(2015) 04 BOM CK 0387

In the Bombay High Court

Case No : Criminal Application No. 5934 of 2013

Deepak and Others

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Penal Code, 1860 (IPC) — Section 406, 498-A

Citation : (2015) ALLMR(Cri) 4354

Hon'ble Judges : Sadhana S. Jadhav, J.

Bench : Single Bench

Advocate : B.S. Deshmukh, Advocate, for the Appellant; R.S. Shinde, Advocate h/f N.L. Choudhari and S.G. Nandedkar, A.P.P., for the Respondent

Judgement

Sadhana S. Jadhav, J.—Heard respective Counsel. Rule. Rule made returnable forthwith with the consent of parties. The applicants herein are accused in RCC No. 340 of 2012. Respondent No. 2 had filed a complaint alleging offence punishable under Sections 498-A and 406 of the Indian Penal Code, before the learned Judicial Magistrate First Class, Dhule. The learned Magistrate had, by an order dated 22nd June, 2012 issued process against the accused for offence punishable under Sections 498-A and 406 of the Indian Penal Code.

2. The learned Counsel for the applicants submits that the applicants herein are residing beyond the territorial jurisdiction of the learned Magistrate, who issued process against the accused. Learned Counsel for the applicants submits that, this is a patent irregularity and that the Magistrate ought to have issued notice under Section 202 of the Code of Criminal Procedure (Cr.P.C.) and, thereafter, proceeded with the matter since he was inclined to issue process. The applicants herein have therefore prayed that the order issuing process be quashed and set aside.

3. The learned Counsel for respondent No. 2 rightly submits that, the proceedings under Section 202 of Cr.P.C. is only an irregularity and it would not

vitiating the proceedings and hence there is no question of quashing the said proceedings for noncompliance of Section 202 of Cr.P.C. In view of this, the matter deserves to be remanded and is accordingly remanded to the Court of 7th Judicial Magistrate First Class, Dhule for complying with the provisions under Section 202 of Cr.P.C. The learned Magistrate ought to have postponed the issuance of process. Hence, the order dated 22nd June, 2012 being at premature stage deserves to be quashed and set aside. It is made clear that the complaint has not been quashed in this petition and that the matter is remanded only for complying with the provisions under Section 202 of Cr.P.C. Hence, following order is passed.

(i) The order dated 22nd June, 2012 passed by learned 7th Judicial Magistrate First Class, Dhule is hereby quashed and set aside.

(ii) The learned Magistrate shall comply with the provisions under Section 202 of the Code of Criminal Procedure within a period of three weeks from the date of receipt of this order and, thereafter, take appropriate steps in accordance with law.

Rule is made absolute in above terms with no order as to costs.