
(2013) 08 BOM CK 0008

In the Bombay High Court

Case No : Criminal Writ Petition No. 1082 of 2012

Vimal Powerloom

APPELLANT

Vs

Ravi Agency

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 1696

Hon'ble Judges : T.V. Nalawade, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.V. Nalawade, J.—Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal. The petition is filed to challenge the order of issue process made by Judicial Magistrate, First Class, Aurangabad in S.C.C. No. 4177/12. The challenge is made on the ground that the J.M.F.C. has not followed the procedure laid down in section 202 of Criminal Procedure Code (as amended in the year 2006). This Court was taken through copy of complaint which is filed by respondent for offence u/s 138 of Negotiable Instruments Act. This Court was taken through copy of verification of complainant and the order made by J.M.F.C. The order dated 9.10.2012 shows that on the basis of this verification and on the basis of the documents produced by the complainant, the J.M.F.C. made the order of issue process, summons.

2. It was submitted for the accused/petitioner that no inquiry or investigation as required in amended provision of section 202 of Cr.P.C. is made by the J.M.F.C. He relied on some reported cases, which include the case reported as National Bank of Oman Vs. Barakara Abdul Aziz and Another, . He has relied on some orders made by this Court also in respect of amended provision of section 202 of Cr.P.C. Almost all the Courts have held that the provision of section 202 of Cr.P.C. as amended is mandatory in nature.

3. The learned counsel for the petitioner submitted that as there was difference

of opinion, this point is referred by one Court to larger bench. A copy of order made by larger bench of this Court in Criminal Application No. 1344/2010 dated 17.9.2010 [Bansilal S. Kabra v. Global Trade Finance Ltd. and Anr.] (Principal Bench) is produced. Following order is made by the larger bench.

1. In view of the fact that SLP against the impugned order dated 29th July 2010 is pending in the Supreme Court, the reference is adjourned.

4. The various decisions rendered by this Court show that this Court has held that the provision of section 202 as amended is mandatory in nature. Thus, the Courts are following the amended provision in this State. In the case of Oman Bank cited supra, it is laid down that it is mandatory provision and procedure needs to be followed by J.M.F.C. In view of this position of law, this Court holds that the order of issue process passed by the J.M.F.C, without following the aforesaid procedure cannot sustain in law. The Magistrate needs to follow the procedure with only object, to ascertain the truth in the allegations made and only prima facie case is required to be made out. The scope of the inquiry u/s 202 of Cr.P.C. is very limited. He is also required to keep in mind the relevant provisions of Negotiable Instruments Act like sections 118 and 139 raise some presumptions. The witnesses like Bank Officers are not required to be examined to prove bank documents. Similarly, in respect of other evidence, the postal endorsement on the notice, there are presumptions u/s 27 of General Clauses Act and those presumptions can be kept in mind by the J.M.F.C. Thus, the scope of inquiry, which may be made by J.M.F.C. is very limited. In such a case to send the matter to police even for limited purpose of investigation is not desirable. In view of these circumstances and position of law, this Court holds that the matter needs to be remanded back by allowing the present writ petition. In the result, the petition is allowed. The order of issue process made by the J.M.F.C., Aurangabad in complaint bearing No. SCC No. 4177/2012 is hereby set aside. Matter is remanded back to the Court of J.M.F.C. to follow the procedure laid down by section 202 of Cr.P.C. as amended in 2006 and for reconsideration of point of issue process. This is to be done within two months from the date of receipt of this order. Rule is made absolute in aforesaid terms.