

Order below Exh.1 in S.T.C. No.108/2022.

Perused record and documents. Present case is filed by complainant against accused as per section 138 of Negotiable Instruments Act. On 19/04/2022 issue process order was passed by Ld. Predecessor of this court against accused namely Vilas Haribhau Kulkarni. Accused Challenged said issue process order before District and Sessions Court Solapur *vide* Criminal Revision application no. 41/2022. On 20/01/2023, said revision application is rejected by Hon'ble Additional District Judge, Solapur. Further accused challenged said order of District Court, Solapur before Hon'ble Bombay High Court in Criminal Writ Petition (WP) No. 1373/2023. Hon'ble Bombay High Court passed an order dated 29/08/2023 and directed this court to conduct an inquiry under section 202 of Cr.P.C.

2. Accordingly, inquiry is conducted. As per section 202 of Cr.P.C., inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate. Admittedly accused is resident of Pandharpur.

3. Complainant filed various documents. It is the case of complainant that he has purchased land admeasuring 81 R bearing Gat no. 276/2 situated at Mouje Inchgaon Tal. Mohol Dist. Solapur from one Mr. Sanjay Prabhakar Badve through registered sale deed. Copy of Sale deed is filed alongwith list at exh. 31/1. Portion of land bearing Gat no.276/2 was acquired for Solapur-Sangli National Highway as per proceeding no. S.R.No.2/16 and 4/21. Accordingly, compensation amount was also fixed. S.D.O, Pandharpur issued notice to all concern. Copy of notice received to complainant is filed at Exh.31/3. However, there was dispute for

compensation amount between Complainant and accused. But during compromise it was decided that, accused will give complainant's share of compensation amount received to him after he received it. Thus, Compromise deed executed between complainant and accused before Tahsildar, Pandharpur on 28/07/2021. Original Compromise deed filed at list exh.10/7. As per that deed accused agreed to pay Rs. 28,50,000/- amount out of compensation amount received in proceeding No. 4/2021. When complainant asked for said amount to accused, he told that complainant can withdraw the amount by depositing cheque given by him. Therefore complainant deposited cheque Exh.10/1. Which was dishonoured on 6/12/2021 by the remark 'Account Closed.' Complainant issued legal notice to accused on 9/12/2021 which is filed at list exh. 10/4. Notice received to accused as receipt exh. 10/5. Despite receipt of said notice accused failed to pay the amount. Hence this complaint is filed. To support the contentions complainant during inquiry, filed witness affidavit of himself and one Mr. Shashikant Tatyasaheb Varade who is witness to compromise deed.

4. The Hon'ble Supreme Court has held in the case of **'Mohinder Singh v. Gulwant Singh, (1992) 2 SCC 213 that:**

"11. This Court as well as various High Courts in a catena of decisions have examined the gamut and significance of Section 202 of the Code and settled the principle of law, the substance of which is as follows: The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements

of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry. Vide Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker and Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar.”

5. Thus, in view of decision of Hon'ble Supreme Court **Mohinder Singh (Supra)**, the scope of inquiry is limited only to see whether prima facie case is made out. During inquiry, accused was present in person he raised certain objections such as signature on notice is forged, no legal liability towards complainant, advocate who issued the legal notice has not come before the court etc. These objections are precisely the defence of accused which cannot be considered at this initial stage as at this stage no detail trial is expected. Hon'ble Supreme Court has held in the case of **Chandra Deo Singh v. Prokash Chandra Bose, 1963 SCC OnLine SC 4** that:

“7. Taking the first ground, it seems to us clear from the entire scheme of Chapter XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till

process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go.”

6. Now for legal requirement to fulfill basic essentials of section 138 of Negotiable Instruments Act, complainant has filed original cheque, return memo, notice, postal receipt, acknowledgement receipt etc. alongwith list at exh.10. As per section 202 of Cr.P.C. for inquiry where accused is residing beyond territorial jurisdiction of magistrate, in suitable cases, examination of documents is also permitted. The nature of present offence is largely depend upon the documentary evidence.

7. In the light of ratio laid down in the cases cited supra, documents and the sworn statement of the complainant, his evidence affidavit, witness affidavit filed by complainant shows that prima facie case is made out and essential ingredients are satisfied to proceed against accused for the offence punishable under section 138 of N.I.Act. Hence, the following order :-

ORDER

Issue process against the accused as per section 204 (1) (a) of The Code of Criminal Procedure, issue process and summons against the accused for the offence punishable **under section 138 of The Negotiable Instruments Act.**

Date :- 03/11/2023.

(P.S.Govekar)
2nd Judicial Magistrate First Class,
Mohol