

Vikrant Developers Vs. Rajendra Rajaram Basaiye and Another

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Court : Mumbai Aurangabad

Decided On : Jun-14-2013

Judge : T.V. Nalawade

Appeal No. : Criminal Writ Petition No.121 of 2011

Appellant : Vikrant Developers

Respondent : Rajendra Rajaram Basaiye and Another

Judgement :

Oral Judgment:

Heard both sides. Rule made returnable forthwith. With consent of parties, Petition is heard finally.

2. Petition is filed to challenge the order of issue process made in S.C.C.No.6450/10 by JMFC Aurangabad. The case is filed by respondent no.1 for offence punishable u/s 138 of Negotiable Instruments Act against present petitioner. The case of the petitioner is that in view of amendment made to Section 202 of Cr.P.C. in 2006, and in view of the interpretation of this provision made by Hon'ble Apex Court in various cases including case of National Bank of Oman V/s Barakara Abdul Aziz (2013) 2 S.C.C. 488, order of issue process cannot sustain in law. It was submitted that as the petitioner's place of residence is shown as Dombivali, which is out of local limits prescribed for JMFC, Aurangabad, the procedure ought to have been followed by JMFC as laid in Section 202 of Cr.P.C.

The provision now provides for making enquiry u/s 202 of Cr.P.C. or limited investigation as provided u/s 202 of Cr.P.C. In view of these circumstances, and admitted fact that the accused, petitioner is resident of Dombivali which is outside local limits of JMFC Aurangabad the order of issue process made by JMFC, needs to be set aside. Matter needs to be remitted back to JMFC Aurangabad for fresh consideration.

3. In the result, Petition is allowed. Order of issue process made in S.C.C.No.6450/2010 by JMFC Aurangabad is hereby set aside.

4. Matter is remitted back to the same Court of JMFC to follow the procedure laid down by Amendment 2006 in Section 202 of Cr.P.C. and for reconsidering the point of issue process. This is to be done within 2 months from the date of receipt of the order of this Court. Rule is made absolute in aforesaid terms.

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