



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 992 OF 2023

Sau. Prerna w/o. Gautam Katariya,
Age: 54 years, Occ : Housewife,
R/o.Vardhaman, 31B-C; Sector F1,
Survey-15, CIDCO,
N-4, Aurangabad.

.. PETITIONER

VERSUS

1] State of Maharashtra

2] Dr. Sheetal Swaroopchand Ostwal,
Age: 50 years, Occ : Doctor,
R/o. Ganpati Hospital, NH-6,
Vidyanagar, Akashwani Chowk,
Jalgaon.

.. RESPONDENTS

...

Mr.Sagar S.Ladda, Advocate for the petitioner.

Mr.A.S.Shinde, APP for the respondent-State

Mr.Kalyan V. Patil, Advocate for the respondent no.2.

...

CORAM : MEHROZ K. PATHAN, J.

Reserved on : 04.02.2026

Pronounced on: 18.02.2026

ORDER :

1] By the present Writ Petition, the petitioner challenges the order dated 17.05.2023 passed by Additional Sessions Judge, Aurangabad in Criminal Revision

Application No.254/2022, thereby quashing and setting aside the order dated 03.03.2022 passed by the 15th Judicial Magistrate First Class in SCC No.1593/2022.

2] The learned counsel Mr. Ladda for the petitioner submits that the learned Revisional Court has committed an error apparent on the face of record in allowing the Criminal Revision in setting aside the well reasoned order dated 03.03.2022. The impugned order dated 17.05.2023 passed by the Additional Sessions Judge, Aurangabad reflects total non application of mind and as such relying upon the judgment in the case of **Sayed Mohammed Omair Sayed Ibrahim and others Vs. State of Maharashtra and others** reported in **2022 (3) Bom.C.R. [Cri.] 245**, the First Appellate Court had allowed the revision erroneously. The learned Revisional Court has wrongly held that there is no *prima facie* evidence on record to show that verification of complainant was recorded, nor inquiry under Section 201 of Criminal Procedure Code was recorded. The learned counsel, therefore, submits that the

impugned order is arbitrary, illegal and the same is liable to be quashed and set aside. He further relies upon the judgment of the Hon'ble Apex Court in the case of **Sunil Todi and others Vs. State of Gujarat and another** reported in **2021 SCC OnLine SC 1174** whereby the Hon'ble Supreme Court has laid down that the provisions of Section 202 of Criminal Procedure Code does not speak formal order nor a speaking order is required to be passed at the stage of issuance of process. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal Court, there is ground for proceeding against the accused under Section 204 Cr.P.C, by issuing process for appearance.

3] The learned counsel, therefore, submits that the order of issuance of process dated 03.03.2022 by the

learned Magistrate clearly shows application of mind by the learned Magistrate inasmuch as the learned Magistrate has specifically stated that it has read the complaint, verification affidavit of complainant filed on record and conducted inquiry under Section 202 of Criminal Procedure Code in view of documents placed on record. It was also recorded that as the accused were residing beyond territorial jurisdiction of this Court, this Court has conducted inquiry under Section 202 of Cr.P.C. The learned Magistrate has also gone through the verification of the original cheque, cheque return memo, notice issued to accused, its postal acknowledgment, report showing the service of notice to the accused and power of attorney in favour of complainant. Thus, the learned Revisional Court has mechanically interfered with the order dated 03.03.2022 passed by the Magistrate, as such, the impugned order is liable to be quashed and set aside.

4] The learned counsel for the petitioner relies upon the judgment of a Constitution Bench **In Re :**

Expeditious Trial of Cases under Section 138 of N.I. Act 1881 in Suo Motu Writ Petition (CRL.) No.2 of 2020, decided on April 16, 2021 wherein it has been held that merely because the accused is residing outside the jurisdiction of the court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record.

5] On the other hand, the learned counsel for the respondent submits that the impugned order is just and proper and needs no interference at the hands of this Court. The learned counsel further submits that the respondent had already paid considerable amount to the petitioner herein, who is the relative of the respondent. The petitioner is taking undue advantage of handing over of the cheque to the petitioner out of family ties. The learned counsel, therefore, submits that the order dated 03.03.2022 does not

show any application of mind while issuing process under Section 138 of N.I. Act to the accused-respondent herein. The Revisional Court has rightly set aside the order dated 03.03.2022 passed by the Magistrate, issuing process against the accused. As such, the impugned order is just and proper and the same is liable to be upheld.

6] I have gone through the order dated 03.03.2022 passed by the 15th Joint Judicial Magistrate First Class, Aurangabad as well as the order dated 17.05.2023 passed by the Revisional Court i.e. Additional Sessions Judge, Court No.8, Aurangabad in Cri.Revn. No.254/2022. The learned Revisional Court has relied upon the judgment in the case of **Sayed Mohammed Omair Sayed Ibrahim** [supra], which had quashed the order passed by the Magistrate only on the point that the impugned order of issuance of process by the Magistrate did not reflect any application of mind or examination of the witness. On the contrary, in the present case, the order dated 03.03.2022 passed by the Magistrate would clearly show that not only

the Magistrate has read the complaint, however, the learned Magistrate has also conducted inquiry under Section 202 of the Criminal Procedure Code after going through the verification and documents on record more particularly, original cheque, cheque return memo, notice issued to accused, its postal acknowledgment, report showing the service of notice to accused and power of attorney in favour of complainant. The documents were also found to be supporting allegations in the complaint *prima facie*. It was also found that the complainant has deposited disputed cheque within time limit and it was dishonored for reason 'exceed arrangement'. It was also noted that the notice was sent to accused demanding payment of cheque amount within time limit under Section 138 of N.I. Act and the said notice seems to have been delivered to the accused. Thus, after satisfying itself with the contents of the allegations and documents, which were placed by the complainant in respect of the complaint, the learned trial Court has issued process on the complaint filed under Section 138 of the N.I. Act.

7] The Hon'ble Supreme Court in the case of **Sunil Todi and others Vs. State of Gujarat and another** reported in **2021 SCC OnLine SC 1174** after considering the order of the Constitutional Bench of the Hon'ble Supreme Court in the case of **In Re : Expeditious Trial of Cases under Section 138 of N.I. Act 1881** in Suo Motu Writ Petition [CRL] No. 2 of 2020 was pleased to hold in para nos.46, 47 and 48, as under :

46. Section 145 of the NI Act provides that evidence of the complainant may be given by him on affidavit, which shall be read in evidence in an inquiry, trial or other proceeding notwithstanding anything contained in the CrPC. The Constitution Bench held that Section 145 has been inserted in the Act, with effect from 2003 with the laudable object of speeding up trials in complaints filed under Section 138. Hence, the Court noted that if the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. Consequently, it was held that Section 202(2) CrPC is inapplicable to complaints under Section 138 in respect of the examination of witnesses on path. The Court held that the evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not

compulsory that he should examine witnesses and in suitable cases the Magistrate can examine documents to be satisfied that there are sufficient grounds for proceeding under Section 202.

47. In the present case, the Magistrate has adverted to:

- (i) The complaint;
- (ii) The affidavit filed by the complainant;
- (iii) The evidence as per evidence list and; and
- (iv) The submissions of the complainant.

48. The order passed by the Magistrate cannot be held to be invalid as betraying a non-application of mind. In *Dy. Chief Controller of Imports & Exports v. Roshanlal Agarwal*, this Court has, held that in determining the question as to whether process is to be issued, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can only be determined at the trial. [See also in this context the decision in *Bhushan Kumar V. State* [NCLT of Delhi].

8] Thus, in the present case also, the impugned order dated 03.03.2022 passed by the Magistrate clearly reflects application of mind by the Magistrate. The

Magistrate has satisfied itself about the allegations made in the complaint and has perused verification of the affidavit of the complaint and supporting documents and after going through the same, had come to the conclusion that the case is made out for issuance of process against the accused – respondent herein. Thus, the impugned order stands the test laid down by the Hon'ble Supreme Court in the case of **Sunil Todi [supra]**.

9] The learned Magistrate has further observed in the order itself that there was inquiry conducted under Section 202 of the Criminal Procedure Code as the respondent was residing beyond jurisdiction of the Judicial Magistrate First Class. The learned Revisional Court, without going into the record, simply relied upon the bare arguments of the respondent–accused that inquiry under Section 202 of the Cr.P.C. was not conducted by the Magistrate. Reliance of the Revisional Court in the case of **Sayed Mohammad [supra]** was, therefore, misconceived as in the said order there was total non-application of mind,

wherein the learned Magistrate has restricted enquiry to the examination of the documents without conducting an inquiry under Section 202 of the Criminal Procedure Code. The restricted scrutiny to the examination of the documents without conducting an inquiry under Section 202 of Criminal Procedure Code which was clearly missed in that order passed by the Magistrate and only on that ground the revision came to be allowed thereby quashing and setting aside the order of the Magistrate in the case of Sayed Mohammed Omair Sayed Ibrahim and others [*supra*]. On the contrary, in the present case, if the order dated 03.03.2022 is seen, the same clearly reflects application of mind not only to the documents annexed to the complaint but also fact that the respondent was not resident within jurisdiction of the learned Magistrate and as such enquiry came to be conducted under Section 202 of the Criminal Procedure Code. The impugned order passed by the Revisional Court is without any application of mind to the order passed by the learned Magistrate and has mechanically allowed the revision on the basis of the

submissions of the respondent without looking into the settled law vide the judgments of Constitutional Bench of the Hon'ble Supreme Court in the Expeditious Trial [supra] and in the case of **Sunil Todi [supra]**. The petitioner has thus made out a case for interference of this Court. Hence the following order :

ORDER

- i] The Writ Petition is allowed.
- ii] The impugned order dated 17.05.2023 passed by the Additional Sessions Judge, Court No.8, Aurangabad in Criminal Revision No. 254/2022 is hereby quashed and set aside.
- iii] The matter is remanded back to the concerned Magistrate. As there was stay to the proceedings vide interim order dated 2nd November, 2023, the learned Magistrate is requested to make an endeavour to complete the trial expeditiously and not beyond a period of one year.

[MEHROZ K. PATHAN]
JUDGE