

[2023 LiveLaw \(SC\) 706](#)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
**ABHAY S. OKA; J., PANKAJ MITHAL; J.**

August 21, 2023.

CRIMINAL APPEAL NO.2484 OF 2023 (Arising out of S.L.P.(Crl.) No.6318 of 2023)

**VISHWAKALYAN MULTISTATE CREDIT CO OP SOCIETY LTD.**

*versus*

**ONEUP ENTERTAINMENT PRIVATE LIMITED**

**Code of Criminal Procedure, 1973; Section 202 - Negotiable Instruments Act, 1881; Section 138 - As far as complaints under Section 138 of the NI Act are concerned, for the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.**

(Arising out of impugned final judgment and order dated 22-02-2023 in CRWP No. 1416/2021 passed by the High Court of Judicature at Bombay, Bench at Aurangabad)

*For Petitioner(s) Mr. Shashibhushan P. Adgaonkar, AOR Mr. Omkar Jayant Deshpande, Adv. Mr. Rana Sandeep Bussa, Adv. Mr. Col. Amit Kumar, Adv. Mrs. Pradnya S Adgaonkar, Adv.*

**ORDER**

Leave granted.

Heard the learned counsel appearing for the appellant. Despite service, no one has entered appearance on behalf of the respondent.

The appellant is the complainant in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (for short "the NI Act"). On 26<sup>th</sup> June, 2021, the Judicial Magistrate issued process on the complaint. By the impugned judgment, the High Court has held that as the respondent was having its office outside the jurisdiction of the Court of the learned Magistrate, it was necessary for the learned Magistrate to hold an inquiry under Section 202 of the Code of Criminal Procedure, 1973 (for short "the CRPC"). In paragraph 15 of the impugned judgment, the High Court held that for non-compliance with the mandate of Section 202 of the CRPC, the order issuing process is illegal. Therefore, the High Court has proceeded to set aside the order issuing process. However, no further direction was issued by the High Court to the learned Judicial Magistrate to hold an inquiry under Section 202 of the CRPC.

We may note here that as far as complaints under Section 138 of the NI Act are concerned, this Court in *Suo Motu Writ Petition (Criminal) No.2 of 2020* in the case of "**In Re: Expeditious Trial of Cases Under Section 138 of N.I. Act, 1881**"<sup>1</sup> has laid down the guidelines. In clause (3) of paragraph 24 of the said decision, the Constitution Bench has directed as under:

"3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses."

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<sup>1</sup> 2021 SCC OnLine SC 325

We, therefore, modify the impugned judgment and direct the Trial Court to proceed from the stage of Section 202 of the CRPC. While doing so, the learned Magistrate will be guided by the direction issued by the Constitution Bench which is reproduced above.

With the above modification, the appeal is partly allowed.

The inquiry under Section 202 of the CRPC shall be conducted as expeditiously as possible and in any event within a period of one month from the date on which a copy of the order is received by the Trial Court.

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