

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] No. 462/2022.

Mrs.Pooja w/o Vishal Maulikar,
Aged about 32 years, Occupation
Service, resident of Flat No.14-B,
Type-IV, CPWD Quarter, Bunglow No.17,
Near Telankhedi Hanuman Mandir,
Civil Lines, Nagpur.

... **APPLICANT.**

VERSUS

1.Vishal s/o Bhimrao Maulikar,
Aged about 37 years, Occupation
Service, resident of C/o. Subhash
Deshmukh, Plot No.11, Anupan State
Bank Colony, Near Taste of South,
Biyani Square, Camp Amravati.

2.The State of Maharashtra,
through Police Station Officer,
Police Station, Gittikhadan, Nagpur.

... **NON-APPLICANTS.**

Mr. S.S. Paliwal, Advocate for the Applicant.
Mr.N.Patil, Advocate for Non-applicant No.1.
Mr.S.M. Ukey, Addl.P.P. for the Non-applicant No.2.

CORAM : VINAY JOSHI, J.

DATE : JULY 13, 2022.

ORAL JUDGMENT :

Heard. **Admit.** Considering the controversy involved in the matter and by consent of the learned Counsel for the parties, Criminal Application is taken up for final disposal at the stage of admission.

2. The applicant, an accused of a private complaint bearing Criminal M.A. No.4184/2019 has called in question the order of issuance of process dated 07.12.2021 passed by the Judicial Magistrate First Class, Court No.10, Nagpur.

3. The learned Counsel appearing on behalf of the applicant would contend that the complaint nowhere discloses entrustment and therefore, issuance of process under Sections 405 and 406 of the Indian Penal Code is wholly erroneous.

4. It is a dispute between husband and wife where the

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husband has lodged a private complaint alleging breach of trust relating to voluminous household articles of which list is annexed along with the complaint. It reveals that the learned Magistrate has called the report of police in terms of Section 202 of the Code and after going through, has held that there is sufficient material to proceed, therefore, process was issued.

5. The impugned order no where discloses application of mind. The learned Magistrate ought to have considered the contents of the complaint, obviously not a defence at this juncture. The reasoning is in a single line which reads as under :

“Having gone through the material on record and after hearing the complainant, I find that there is sufficient material on record to proceed against accused under Sec. 405 and 406 of I.P.C.”

6. Apparently the order no where discloses as to what has weighed to the learned Magistrate to hold that a prima facie case is made out, or on which basis the mind has been applied. The practice of passing stereotype order is highly deprecated. The order

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of issuance of process does not require elaborate reasoning, but, at least it should reflect due application of mind. Any how, the impugned order would not sustain in the eyes of law, as it loudly demonstrates total non-application of mind. As a result, the impugned order dated 07.12.2021 passed by the Judicial Magistrate First Class, Nagpur in Cri.M.A.No.4184/2019 is hereby quashed and set aside. The matter is remanded back to the Magistrate to consider entire material and pass a speaking order in accordance with law.

7. Criminal Application is accordingly allowed and disposed of in aforesaid terms.

JUDGE