

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

CRIMINAL APPLICATION NO.536 OF 2023

**SANDEEP TARACHAND JAIN AND ANOTHER
VERSUS**

**THE ASSISTANT COMMISSIONER, CENTRAL EXCISE AND
CUSTOMS DHULE DIVISION, DHULE**

Mr. A. N. Nagargoje, Advocate for the applicants

Mr. D. S. Ladda, Advocate for the respondent

CORAM : R. M. JOSHI, J.

DATE : 5th SEPTEMBER, 2023

P.C. :-

1. At the outset learned counsel for the applicants states that he restricts his application to the extent of challenge to the impugned order of issuance of process. He states that at this stage he does not wish to press quashment of the proceeding.

2. It is his contention that the learned Trial Court while passing impugned order of issuance of process against accused was not recorded any reason. He relied upon the judgment of Division Bench of this Court in case of ***State of Maharashtra Vs. Shashikant Eknath Shinde, 2013(4) Bom.C.R. (Cri.) 801***. He submits that for the purpose of issuance of process application of mind of the Magistrate must be reflected from the order. Learned counsel for the respondent supported the impugned order.

3. Perusal of the record indicates that proceedings was filed under the

provisions of Sections 9A, 9AA of Central Excise Act, 1944 r/w Sections 132, 133, 135 and 140 of Customs Act, 1964. The complaint shows that number of facts are averred therein and the documents connected thereto are relied upon. In this backdrop following order is passed by the learned Magistrate, which reads thus:

"Order

Issue summons to accused u/s 9A, 9AA of
Central Excise Act, 1944 r.w Section 132, 133,
135 and 140 of Customs Act, 1962."

4. On the face of it, said order does not show any application of mind of the learned Magistrate to the facts of the case for the purpose of issuance of process against accused. No doubt the Magistrate is not required to pass any detailed order while issuing process however, at the same time there is obligation on the Magistrate to examine the nature of allegations in the complaint and documents relied upon if any and then to record *prima facie* findings making out case for issuance of process. Such application of mind is completely absent in this case.

5. Hence the order impugned cannot sustain. In the result the petition is partly allowed. The impugned order dated 11/11/2022 is set aside. RCC No. 197/2015 is relegated back to the Magistrate for passing appropriate order in accordance with law. Since the proceeding is of year 2015, learned Magistrate is directed to pass appropriate order within a period of one month from the date of receipt of writ of this Court.

(R. M. JOSHI, J.)

ssp