

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1454 OF 2020

Paresh Chawla s/o Mahendra

Singh Chawla & Anr.

... Petitioners

Versus

The State of Maharashtra

... Respondent

Mr. Raju Yamgar a/w Bharti Lokhande for the Petitioners.

Mr. R. M. Pethe, APP for the Respondent-State.

CORAM: R. N. LADDHA, J.

DATE : 6 NOVEMBER 2023

P.C. :-

. Heard learned counsel for the parties.

2. Mr Raju Yamgar, learned counsel, brought to my attention to the orders dated 4 August 2006 and 15 March 2019 of issuance of process and submits that the impugned orders of issuance of process are cryptic and without application of mind.

3. Upon perusal of these impugned orders, it is clear that the orders of issuance of process are cryptic and unreasoned. The learned Magistrate must demonstrate application of mind by giving reasons as to why the process is issued against the accused.

Initially, on 4 August 2006, and thereafter, on 15 February 2019, the learned Magistrate in R.C.C. No. 492 of 2006 passed the orders of issuance of process against the petitioners.

4. Passing an order of issuance of process is not an empty formality. The Magistrate ought to apply his mind and examine if sufficient grounds exists in a case or not before issuing an order of process. The formation of such an opinion must be reflected in the order of issuance of process. A reference in this regard can be made to the judgment of the Hon'ble Supreme Court in *Lalankumar Singh v/s. State of Maharashtra*¹.

5. Therefore, the orders of issue process are liable to be quashed and set aside. However, at the same time, it must be considered that if the Magistrate did not fulfil his duty, the respondent/complainant should not be held responsible and should not have to endure any consequences due to Magistrate's failure. As a result, the impugned orders of issuance of process passed in case bearing R.C.C.No.492 of 2006 pending before the learned Judicial Magistrate First Class, Vashi, Navi Mumbai, are quashed and set aside, and the learned Magistrate is directed to pass a reasoned order afresh.

6. The petition stands disposed of. It goes without saying that if necessary, the petitioners are free to seek legal recourse for their

1 2022 SCC OnLine SC 1383.

grievances if the occasion so arises. It is made clear that this Court has not examined the merits of the case, and the trial Court shall pass an order afresh on its own merits in accordance with law.

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R. N. LADDHA, J.