

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

CRIMINAL WRIT PETITION NO. 1115 OF 2022

M/s. Lakadawala Developers Pvt. Ltd.,
through Musa Ismain Lakadawala & Anr. ... Petitioners
Versus
Municipal Corporation of Greater Mumbai
through S. B. Mahajan & Anr. ... Respondents

Mr. Kamran Shaikh i/by Rajendra Rathod for the Petitioners.
Ms. Madhuri More for the Respondent No.1-MCGM.
Ms. M. H. Mhatre, APP for the Respondent No.2-State.

CORAM: R. N. LADDHA, J.

DATE : 30 OCTOBER 2023

P.C. :-

1. Heard learned counsel for the respective parties.
2. Mr Kamran Shaikh, learned counsel, brought to my attention to the order of issuance of process, which reads thus:

“ ORDER
Read complaint and perused documents. Heard argument of Ld. ALO Mahajan. Prima facie case made out. Hence, sufficient ground to proceed against accused for the offence committed under section 258 of M.M. Act. Hence, issue process against the accused. Returnable on 07/09/2021.

Sd/-
Metropolitan Magistrate,
Dated -: 03/08/2021 41st Court, Shindewadi, Dadar Mumbai.”

3. Upon perusal of this impugned order, it is clear that the

order of issuance of process is a cryptic and unreasoned order. The learned Magistrate needs to demonstrate such application of mind by giving reasons as to why the process is issued against the accused.

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. Such an order must demonstrate the formation of such an opinion. 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 order of issue process is 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 No.1/complainant should not be held responsible and should not have to endure any consequences due to Magistrate's failure. As a result, the impugned order of issuance of process in case bearing C.C.No.4100879/SS/2021 pending before the learned Metropolitan Magistrate, 41st Court, Shindewadi, Dadar, Mumbai, is 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 redress for their

1 2022 SCC OnLine SC 1383.

grievance, 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.

R. N. LADDHA, J.

BIPIN DHARMENDER
PRITHIANI

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DHARMENDER PRITHIANI
Date: 2023.10.21 14:07:01 +0530