

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1420 OF 2018

Capt. Haresh Gaglani (Retd.) ... Petitioner
Versus
The State of Maharashtra & Anr. ... Respondents

Mr. Prashant G. Pandey for the Petitioner.
Ms. M. H. Mhatre, APP for the Respondent No.1-State.
Ms. Madhuri More for the Respondent No.2-MCGM.

CORAM: R. N. LADDHA, J.

DATE : 30 OCTOBER 2023

P.C. :-

- . Heard learned counsel for the respective parties.
2. Mr Prashant G. Pandey, learned counsel, brought to my attention to the order of issuance of process, which reads thus:

“
Order
*Perused complaint & documents
annexed, heard, prima facie case
has been made out against the
accused. Hence, issue process
against the accused as prayed.*

sd/-
Metropolitan Magistrate
41 Court, Shindewadi, Dadar,
Mumbai.
14/02/2017”

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. The order of issuance of process is not an empty formality. It requires the Magistrate to apply his mind and determine whether there exists sufficient grounds in a case to pass such order of issuance of process. It is necessary that the formation of such an opinion must be recorded in the order itself. A reference in this respect could 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.2/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.4102009/SS/2017 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.

1 2022 SCC OnLine SC 1383.

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

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