

Nikita

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

WRIT PETITION NO.562 OF 2021

Thinniam Thyagarajan Shivaguru ... Petitioner
V/s.
The State of Maharashtra and Ors ... Respondents

Mr. Girish Kulkarni a/w Faisal Sayyed i/b MKA Manilal
Kher Ambalal and Co. for the Petitioner.

Mr. H.S. Venegaonkar a/w Pradeep Yadav a/w Mayank
Joshi a/w Yash Palan a/w Divya Gontia for the
Respondent No.2.

Mr. A.R. Patil, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 26, 2023

P.C.:

1. The petitioner who is accused No.32 in Criminal Miscellaneous Application No.16 of 2020, is challenging order of issuance of process dated 23rd January 2020 passed by District Judge-1, Pune for offences punishable 36(c), 71 r.w. 450, 74, 92,, 128, 129, 134, 137, 143, 147, 177(4), 188(5), 447, 448, 449, of the Companies Act 2013 and section 209, 211, 217, 227, r.w. 233 and 628 of the Companies Act, 1956.

2. The allegations against the petitioner are in paragraph No.73 held as under:-

“XIV. A-32 TT Shivguru : A-32 TT Shivguru Asst. General Manager and branch head of Mid Corporate Branch, Pune

failed to verify the cash flow in the escrow account of the project Water fall Residence and escrow account related to another project DSK Gold Leaf”

3. On perusal of the order of issuance of process it appears that the Magistrate has not applied judicial mind to the allegations made against the present petitioner. The learned Magistrate need to issue process based on material placed on record against each accused and prima facie satisfaction of material to satisfy individual offences. It appears that the Trial Court has issued process against petitioner without applying its judicial mind. Hence the impugned order cannot be sustained and following order:
4. The impugned order dated 23rd January 2020 passed by District Judge -1 in Criminal Miscellaneous Application No.16 of 2020, is set aside qua petitioner only.
5. The learned Trial Court shall decide and take decision on the point of issuance of process in accordance with law.
6. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)