

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

Criminal Writ Petition No. 4900 of 2022

National Organic Chemical Industries
Ltd.,
(now known as “NOCIL Ltd.”),
A Company incorporated under the
Companies Act, 1956, having its
Registered office at Mafatlal House,
H.T.Parekh Marg, Backbay Reclamation,
Churchgate, Mumbai-400 020.

Digitally
signed by
CHITRA
SANJAY
SONAWANE
Date:
2023.12.19
11:51:32
+0530

... Petitioner

Versus

1. State of Maharashtra,
Through its Office at Government
Pleader, High Court, Bombay.

2. Bhaskar Mendon,
having his address at A-204,
Bhansuri CHS Ltd., Sector-1,
Vasai (East), Palghar-401 218,
District Maharashtra.

... Respondents

Mr Anand Pai, Advocate a/w Rahul Sanghvi a/w Netaji Gawade i/b
Sanjay Udeshi & Co. for the Petitioner.
Mr HJ Dedhia, APP for respondent No.1/State.
Ms Jane Cox, Advocate i/b Mr Ghanshyam R. Thombare for
respondent No.2.

Coram : R. N. Laddha, J.

Reserved on : 18 October 2023.

Pronounced on: 18 December 2023.

Order :

Heard Mr Anand Pai, the learned counsel appearing on behalf of the petitioner, Mr HJ Dedhia, the learned Additional Public Prosecutor for the State; and Ms Jane Cox, the learned Counsel for the second respondent.

2. By this petition, the petitioner seeks to challenge the order dated 30.1.2021 ('the impugned order') passed by the learned Metropolitan Magistrate, 64th Court, Esplanade, Mumbai, in CC No.11-SW-2020, whereby the learned Magistrate issued the process against the petitioner. The order reads thus:

“ Perused the complaint, statement of complainant recorded u/sec. 200 of CrPC, 1973 and documents filed in support viz. Affidavit filed in W.P. No.2648/1999 dtd. 21.03.2001 and written statement filed in Reference (IDA) No.382/2006 before the Ld. Labour court, Mumbai dtd. 05.05.2015.

2) I have gone through the verdicts of Hon'ble Parent High Court in W.P. No.538/2018 dtd. 08.08.2018 and order passed in Review Petition No.44/2018 in WP No.583/2018 dtd. 05.11.2019.

3) Heard, Ld. Counsel for the complainant.

4) In view of the material placed on record and submissions advanced and observations of the Hon'ble High court in Review Petition, apparently, the complainant has made out the offence to issue process for filing false affidavit/making false statement against the accused u/Sec. 191, 196, 200 r/w 107 IPC punishable u/Sec. 193 of IPC, 1860: hence following order :

ORDER

Process be issued against accused for the offence u/Sec. 191, 196, 200 r/w 107 of IPC punishable u/ Sec.193 of IPC, 1860."

3. A bare perusal of the impugned order shows that it is unreasoned and does not demonstrate any application of mind. While the impugned order refers to the pleadings and the orders passed by the Courts, it fails to reflect the opinion of the learned Magistrate and the context in which these documents *prima facie* constitute the offences.

4. It is a settled position in law that the Magistrate is not required to record detailed reasons while passing an order of issuing process. However, such orders are not an empty formality, and doing so as a matter of routine, without cautiously examining the material available on record and appreciating the statutory provisions, may result in putting the criminal law in motion and summoning an innocent individual to stand trial. Before issuing a process, the Magistrate must carefully exercise his judicial discretion and scrutinise the material on record. He must satisfy himself and determine whether sufficient grounds exist to summon the accused to stand trial. Once he forms such an opinion, he must record it in his order. When an issue process order fails to reflect such application of mind, it is liable to be set aside. A reference in this regard may be made to the decision of the Hon'ble Supreme Court

in *Lalankumar Singh Vs. State of Maharashtra*¹.

5. In view of this, the impugned order of issuance of a process dated 30.01.2021, passed in CC No.11-SW-2020 by the learned Metropolitan Magistrate, 64th Court, Esplanade, Mumbai, is quashed and set aside. However, at the same time, it must be considered that the complainant should not be held responsible or have to endeavour any consequences due to the Magistrate's failure in fulfilling his duty. The learned Magistrate is, therefore, directed to pass an order afresh on its own merits in accordance with the law.

6. The criminal writ petition stands disposed of accordingly. It goes without saying that, if necessary, the petitioner is free to seek legal recourse for his grievances if the occasion so arises. It is made clear that this Court has not examined the merits of the case, and all contentions of the parties are left open.

[R. N. Laddha, J.]

1. 2022 SCC OnLine SC 1383