

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.873 OF 2022**

- 1) M/s. Himalayan Heavy Lifters (I) Pvt. Ltd.
Having office at: 101/102, 1st Floor,
Kashiram Jamnadas Building,
5, P. D'mello Road, Mumbai – 400 009

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- 2) Mr. Harbhajan Singh Saggi
Age: 54 years, Occ: Business
R/at: Atur Park, 902/903,
Ganga Tower 2 C.H.S,
V.N Purav Marg, Chembur,
Mumbai, Maharashtra-400071

...Applicants

V/s

- 1) Union of India
(Through Inspectorate Dock Safety, Mumbai)
- 2) Mr. V.J Gonsalves
Age. 50 years
Assistant Director (Safety),
Inspectorate Dock Safety, Mumbai
Ministry of Labour and Employment,
Government of India, OSC Building,
3rd Floor, Behind GPO,
P.D'mello Road, Mumbai- 400038

- 3) The State of Maharashtra

...Respondents

Mr SR Samel a/w. Mr Aditya Gole i/by Rajeev Sawant & Associates for the Applicants.

Mr Sandesh D. Patil a/w. Ms Anusha P. Amin and Mr Chintan Shah for Respondents No.1 and 2.

Ms SD Shinde for APP/ State.

Coram: R. N. Laddha, J.

Date: 23 October 2023

P.C.: -

Heard Mr SR Samel, the learned Counsel appearing on behalf of the Applicants; Mr Sandesh D. Patil, the learned Counsel appearing on behalf of Respondents No.1 and 2; and Ms SD Shinde, the learned APP for Respondent No.3/State.

2. By this Application, the Applicant seeks to challenge the Order dated January 29, 2020 ('impugned order') passed by the learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai, in Case No.1027/SS/2020, whereby the learned Magistrate issued summons to the Applicants.

3. A bare perusal of the impugned order shows that the impugned order is cryptic, unreasoned and passed without application of mind. The impugned order is a handwritten order on the first page of the complaint. The impugned order fails to demonstrate whether the Magistrate had examined the complaint, verification statement or witness statements before issuing the

summons and also does not make reference to the relevant legal provisions under which the summons was issued. The impugned order reads as follows:

“ o —
Issue summons
to both accused.
Sd/
MM
29.1.20”

4. Issuing summons as a matter of routine without cautiously examining the material available on record and appreciating the statutory provisions may result in an innocent individual being summoned to stand trial. Thus, it is imperative that prior to issuing the summons, the Magistrate must carefully exercise his judicial discretion and demonstrate the application of mind by recording appropriate reasons.

5. It is a settled position in law that a Magistrate is not required to record detailed reasons while passing an order of issuing summons; however, such an order must demonstrate that the Magistrate has, after carefully scrutinising the material on record, put the criminal law into motion by issuing summons. After being satisfied that there are sufficient grounds for summoning the accused to stand trial, the Magistrate should issue the summons.

6. Since the impugned order is passed mechanically without

providing the reasons for issuing summons, it must be quashed and set aside. However, at the same time, it must be considered that the complainant should not be held responsible or have to endure any consequences due to the Magistrate's failure in fulfilling his duty. Therefore, the impugned order of issuance of summons dated January 29, 2020, passed in Case No.1027/SS/2020 by the learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai, is quashed and set aside, and the learned Magistrate is directed to pass an order afresh on its own merits in accordance with law.

7. The Application stands disposed of accordingly. It goes without saying that, if necessary, the Applicants are free to seek legal recourse for their 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 all the parties are left open.

[R.N. Laddha, J.]