

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3069 OF 2018**

Sushil S Lyngdoh

Aged 64 years, Indian Inhabitant,

Occupation: business, residing at c/o

Dr. T. I. Syiemlieh, Chapel Road,

Qualapatty, Shillong 793002, Meghalaya ...Petitioner

Versus

1. The State of Maharashtra

2. Income Tax, Asst. Director of Income

Tax (Inv.), Unit 1 (4), Mumbai 4th

Floor, Scindia House, Ballard Estate

Mumbai 400038

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...Respondents

(Original Complainant)

Mr Manish Bohra, Advocate i/by AS Khan & Associates for the
Petitioner.

Ms SD Shinde, Advocate for Respondent No.1/State.

Mr Suresh Kumar, Advocate for Respondent No.2.

Coram: R. N. Laddha, J.

Date: 19 October 2023

P.C.:

The challenge in this Petition is to the Order dated 28 August
2017 of issuance of a process ('impugned order') passed in CC

No.189/SW/2016 by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai.

2. Heard Mr Manish Bohra, the learned Counsel appearing on behalf of the Petitioner; Ms SD Shinde, the learned Additional Public Prosecutor for Respondent No.1/State; and Mr Suresh Kumar, the learned Counsel appearing on behalf of Respondent No.2.

3. Upon perusal of the impugned order, it is apparent that the impugned order is cryptic, unreasoned and passed without application of mind. The impugned order reads as follows:

“ **ORDER BELOW EXHIBIT-1**

*Perused the complaint and documents.
Heard the learned Advocate for the complainant. The complainant has made out his prima facie case to issue process, hence process be issued against the accused for an offence punishable U/s. 276C(1) r.w.s. 278 B of the Income Tax Act.*

Sd/-

(A.D. Palaspagar.)

*Addl. Chief Metropolitan Magistrate,
38th Court, Ballard Pier, Mumbai*

Date: 28.08.2017

”

4. While passing the order of issuance of process, the learned Magistrate failed to provide any reasons for issuing a process against the Petitioner. Instead, he recorded a standard statement for all

accused. This is not an appropriate way for the Magistrate to exercise his judicial discretion. The Magistrate must carefully exert his judicial discretion and demonstrate the application of mind by providing reasons for issuing a process against an accused after considering all aspects. Since the impugned order is passed mechanically without providing the reasons for issuance of a process, the same 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 process dated 28 August 2017 passed by the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, in CC No.189/SW/2016 is quashed and set aside *qua* the Petitioner and the learned Magistrate is directed to pass an order afresh on its own merits in accordance with law.

5. The 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 all the parties are left open.

[R. N. Laddha, J.]