

VRJ

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

WRIT PETITION NO.4930 OF 2022

Flipkart Internet Private Limited and

Ors.

... Petitioners

V/s.

State of Maharashtra Thr. Food Safety

Officer Yogesh Suresh Kanse and Anr.

... Respondents

Mr. Aabad Ponda, Senior Advocate with Mr. Vikrant Singh Negi with Mr. Pratik Thakkar & Ms. Sneha B. i/by DSK Legal for the petitioners.

Mr. Arfan Sait, APP for the respondent No.1/State.

Mr. Yogesh S. Kanse for the respondent No.2 is present.

CORAM : AMIT BORKAR, J.

DATED : MARCH 28, 2023

P.C.:

1. The petition is directed against order dated 22nd March 2022 issuing summons to the petitioners for offences under the Food Safety and Standards Act, 2006. The order of issuance of summons reads as under:

“Complaint is filed through complainant who is Govt. Employee it be registered. Accused is absent. Issue summons against Accused.”

2. On perusal of the order, it appears that it does not show application of mind by the Magistrate.

3. The addresses of petitioner Nos.2 and 3 are outside

territorial jurisdiction of the Magistrate. It appears that inquiry under section 202 of the Code of Criminal Procedure, 1973 has not been conducted. On both these counts, the impugned order cannot be sustained.

4. Learned Senior Advocate in addition submitted that the petitioner No.1 being intermediary is not liable for prosecution. According to him, the petitioner No.1 has appointed a nominee and, therefore, liability if at all is of nominee and not the petitioners. Such contentions can be raised by the petitioners before the Magistrate, if the Magistrate on the basis of material is satisfied that they are exceeds prima facie case for issuance of process. At this stage this Court is not considering both these submissions on merits.

5. For the reasons stated above, the impugned order cannot be sustained. The Order dated 22nd March 2022 passed by the Metropolitan Magistrate 46th Court, Mumbai is quashed and set aside.

6. The Magistrate shall consider as to whether the complainant has made out a case for issuance of process for the offences alleged in the complaint.

7. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)