

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

**CRIMINAL WRIT PETITION NO. 5034 OF 2022**

SVC Industriesa Ltd. & Ors. ... Petitioners  
Versus  
Registrar of Companies & Ors. ... Respondents

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Mr.P. G. Sabnis for the Petitioners.  
Mr.D. A. Dube a/w Rupesh Dubey for the Respondent Nos.1 & 2.  
Ms.M. H. Mhatre, APP for the Respondent No.3-State.

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**CORAM: R. N. LADDHA, J.**

**DATE : 30 OCTOBER 2023**

**P.C. :-**

- . Heard learned counsel for the respective parties.
2. Mr. P. G. Sabnis, learned counsel, brought to my attention to the order of issuance of process. The orders reads thus:

*“Company Prosecutor Present. Complaint filed today by ROC. Cognizance taken against all accused u/s. 62, 63 of Companies Act. Issue Summons to all accused.*

*Adjd. To 02/01/10*

*Date: 15/10/09”*

3. Upon perusal of this impugned order, it is clear that the order of issuance of process is a cryptic and unreasoned order. The learned Magistrate needs to demonstrate such application of mind

by giving reasons as to why the process is issued against the accused.

4. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. A reference in this respect could be made to the judgment of the Hon'ble Supreme Court in *Lalankumar Singh v/s. State of Maharashtra*<sup>1</sup>.

5. Therefore, the order of issue process is liable to be quashed and set aside. However, at the same time, it must be considered that if the learned Magistrate did not fulfil his duty, the respondent No.1/complainant should not be held responsible and should not have to endure any consequences due to Magistrate's failure. As a result, the impugned order of issuance of process in case bearing C.C. No.1615/SS/2014 pending before the learned Metropolitan Magistrate, 40<sup>th</sup> Court at Girgaon, Mumbai, is quashed and set aside, and the learned Magistrate is directed to pass a reasoned order afresh.

6. The petition stands disposed of. It goes without saying that if necessary, the petitioners are free to seek legal redress for their grievance, if the occasion so arises. It is made clear that this Court

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1 2022 SCC OnLine SC 1383.

has not examined the merits of the case, and the trial Court shall pass an order afresh on its own merits in accordance with law.

**R. N. LADDHA, J.**