

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

CRIMINAL WRIT PETITION NO. 4659 OF 2018

First Global Stock Broking Pvt. Ltd. & Ors. ... Petitioners
Versus
The State of Maharashtra & Ors. ... Respondents

Mr. Girish Kulkarni, Senior Advocate i/by Vishal Khanavkar for the
Petitioners.

Mr. Tushar Sonawane, Amicus Curiae for the Respondent No.2.

Mr. K. V. Saste, APP for the Respondent No.1-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 19th JULY, 2023

P.C. :-

. The respondent-complainant initiated complaint no. 42 of 2018 before the Metropolitan Magistrate, 40th Court, Girgaum, Mumbai, alleging that his investment in the stock market was based on promise of appreciation and high returns, i.e. more than double the amount invested, which was not passed on to him.

2. The learned Magistrate after considering the complaint and recording the verification of the respondent-complainant passed the impugned order on 12th September 2018, which reads thus:

*“Heard. There appears allegation of cognisable offence. Concern
P.S. to register FIR, investigate and report.”*

3. The challenge to the aforesaid order by the petitioners is based on the following legal submissions that;

4. The order reflects complete non-application of mind by the Magistrate as in a most cryptic manner the Magistrate has stated that the complaint discloses a cognizable offence without considering the contents of the complaint so also by recording satisfaction of the necessary ingredients of the offence alleged against the petitioners. Mr. Girish Kulkarni, learned Senior Counsel, drawn support from the judgments of Apex Court in the matters of ***Priyanka Srivastava & Anr. & State of Uttar Pradesh & Ors.*** reported in ***(2015) 6 SCC 287*** and ***Anil Kumar v/s. M. K. Aiyappa***, reported in ***(2013) 10 SCC 705***.

5. While countering the aforesaid submissions, the counsel for the respondent-complainant concedes, on instructions from the respondent-complainant who is present in the Court, that the order impugned suffers from non-application of mind and submits that he shall appear before the learned Magistrate on a given date so as to enable him to pass appropriate order.

6. In this background, having regard to the fact that the impugned order does not reflect the application of mind by the Magistrate and the said fact being conceded by the respondent-complainant, we deem it appropriate to allow the present proceedings by quashing the order impugned dated 12th September 2018.

7. In the aforesaid view, we deem it appropriate to permit the respondent-complainant to appear before the said Magistrate on 21st

August 2023.

8. We expect the Magistrate to pass a fresh order in the matter having regard to the law laid down by the Apex Court in the matter of ***Priyanka Srivastava & Anr.*** and ***Anil Kumar*** (supra).

9. Needless to observe that this Court has not gone into the merits of the matter and the contentions of the respective parties are kept open.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]

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