



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (APL) No. 32 of 2023

Shri. Chok Kumar Jha ..vs.. State of Maharashtra at the instance of P.M. Ballal, Drugs Inspector, O/o
Jt. Commissioner, Food & Drugs Administration, M.S. Nagpur]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. T. M. Shah, Advocate for the applicant
Mrs. M. H. Deshmukh, APP for the State/non-applicant

CORAM : ANIL L. PANSARE J.

DATE : 24-08-2023

Heard.

The applicant has arrayed as accused before the Magistrate Court. Respondent (original complainant) has filed complaint under Sections 18(a)(i) read with Section 16, Section 18-B and Section 34, punishable under Section 27(d) and Section 28-A of Drugs and Cosmetics Act, 1940 and Rules thereunder.

The applicant is aggrieved by the order of issuance of process which reads thus :-

“Issue process against accused in the form of summons for the offence punishable under sections of Drugs and Cosmetics Act.”

The order obviously is against the well settled principles of law. The Hon’ble Apex Court in the case of ***Lalankumar Singh and ors. Vs. State of Maharashtra***

[AIR 2022 SC 5151] has held that the Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not and that the formation of such an opinion is required to be stated in the order itself. It is further held that the order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a *prima facie* case against the accused. The Court further held that the order need not contain detailed reasons.

Unfortunately, the learned Additional Chief Judicial Magistrate has passed a very cryptic order without assigning any reason of whatsoever nature. The order should indicate reasons for formation of *prima facie* opinion. Having not done so, the order is illegal, perverse and thus, liable to be set aside. Hence, following order.

(i) The order dated 16-10-2020 passed by the Additional Chief Judicial Magistrate, Nagpur in R.C.C. No. 2327/2020 is set aside.

(ii) The Magistrate shall proceed further in accordance with settled principles of law.

[Anil L. Pansare, J.]