

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

WRIT PETITION NO. 449 OF 2024

Ram Bharat Yadav

..Petitioner

Vs.

K. S. Kendre and Anr.

..Respondents

Mr. Kushal Mor a/w. Mr. Tanmay Karmarkar i/b. Apporv
Srivastava, for the Petitioner.

Ms. Shilpa Talhar, APP for the Respondent – State.

CORAM : R. N. LADDHA, J.

DATE : 10 MAY 2024

P.C.

. Heard.

2. Issue notice to the respondents.

3. Learned APP waives service of notice on behalf of
respondent - State.

4. Mr. Kushal Mor, the learned counsel for the petitioner
brought to my attention the order of issuance of process, which
reads thus:

ORDER BELOW EXH.1

Perused Complaint. The complaint is presented by the complainant in the official capacity. Hence, it be registered as Summary Criminal Case.

2. Issue process against the accused for the offence U/sec. 59(1) of the Factories Act, 1948 punishable under sec. 92 of the Factories Act, 1948. Issue summons to the accused returnable on 05/02/2021.

5. Upon perusal of the impugned order, it is clear that the order of issuance of process is cryptic and unreasoned order. The learned Magistrate needs to demonstrate such application of mind by indicating the reasons for formation of an opinion for issuance of process. Passing an order of issuance of process is not a mere formality and the Magistrate ought to apply his mind and examine if sufficient grounds are exist in case or not before issuance of order of process. A reference in this regard can be made to the judgment of the Hon'ble Supreme Court in Lallankumar Singh Vs. State of Maharashtra 2022 SCC Online SC 1383.

6. Therefore, the order of issuance of process is liable to be quashed and set aside. However, at the same time, it must be considered that if the Magistrate fails to fulfill his duty, the respondents should not be held responsible and should not suffer

consequences, due to Magistrate's lapse.

7. As a result, the impugned order of issuance of process in Sessions Case No.522/2020 passed by the Chief Judicial Magistrate, Raigad, Alibag is quashed and set aside and the learned Magistrate is directed to pass a reasoned order afresh. The petition stands disposed of accordingly.

8. It goes without saying that if necessary, the petitioner is free to seek legal redress for his grievance if the occasion so arises. It is made clear that this Court has not examined the merits of the case and the trial Court shall pass an order afresh on its own merits in accordance with the law.

R. N. LADDHA, J.