

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

CRIMINAL APPLICATION NO. 1203 OF 2016

Saroj Mishra

..Applicant

Vs.

Mohd. Gauhar Iqbal and Ors.

..Respondents

Mr. Vivek Gupta, for the Applicant.

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

CORAM : R. N. LADDHA, J.

DATE : 12 MARCH 2024

P.C.

. Mr. Vivek Gupta, learned counsel brought to my attention the order of issuance of process. The order reads thus-

“Heard the Complainant. Perused the Complaint and its annexures. Perused the MOU. A prima facie case is made out. Issue process against the accused u/s. 323, 504, 506, 406 & 420 r/w. 34 of IPC.”

2. Upon perusal of the 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.

3. 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 Magistrate did not fulfil his duty, the respondent / 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 dated 5 December 2013 of issuance of process in C.C. No.487/PW/2012 is quashed and set aside and the learned Magistrate is directed to pass a reasoned order afresh.

4. As such, the criminal application stands disposed of. It goes without saying that if necessary, the applicant 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.