

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

WRIT PETITION NO.4049 OF 2022

HDFC Bank Limited And Ors. ... Petitioners
v/s.
Pune Municipal Corporation And Anr. .. Respondents

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Mr. Shirish Gupte, Senior Advocate, a/w. Mr. Abhay Nevagi, Mr. Amit Singh and Mr. Kabeer Pansare, i/b. Abhay Nevagi & Associates, for the Petitioners.

Mr. Abhijit Kulkarni, a/w. Krushna Jaybhay, Ms. Sweta Shah and Mr. Gaurav Shahane for Respondent No.1/PMC.

Mr. Arfan Sait, APP, for Respondent No.2/State.

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CORAM : R.N. LADDHA, J.

DATE : 21 MARCH 2024

P.C. :

. Mr. Shirish Gupte, learned Senior Counsel for the petitioners, highlighted the order of issuance of process and submitted that the order lacks reasoning, appears cryptic, and is not even signed by the learned Magistrate.

2. Upon perusal of the order, it becomes apparent that the learned Magistrate affixed a rubber stamp bearing the following words:

*“Issue Summons/Process against Accused u/s
_____ of _____ on 05/06/2010 Dt. _____
JMFC (PMC), Pune.”*

3. After affixing the aforesaid stamp, the Magistrate has not filled even the blank spaces with the sections of alleged offences, nor signed the order. This approach does not align with the appropriate exercise of judicial discretion by the Magistrate. The learned Magistrate should indicate reasons for issuing the process against the accused to demonstrate thoughtful consideration.

4. For the reasons stated above, the order for issuing process is susceptible to being invalidated and set aside. However, it is essential to recognise that if the Magistrate failed in their duty, the respondent/complainant should not bear any responsibility or suffer consequences due to the Magistrate's lapse. As a result, the impugned order of issuance of process, in S.C.C. No.68 of 2010, pending before the learned Judicial Magistrate, First Class, Pune, is quashed and set aside, and the learned Magistrate is directed to pass an order afresh.

5. The petition as such stands disposed of. It goes without saying that, if necessary, the petitioners are free to seek legal redress for their grievances 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.

6. The petition stands disposed of accordingly.

(R.N. LADDHA, J.)