

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

Criminal Application No.1549 of 2019

Rushinandan Developer, Pune through
Partner Shashank Chandrakant Nanaware
Age 50 years, Occ. Business,
R/at. 108, Profile Residency,
Mayur Colony, Kothrud, Pune- 411 038. ... Applicant
versus

1. Jagannath Shivram Kharat
Age 74 years, Occ. Retired,

2. Smt Mangal Siddharth Kharat
Age 74 years, Occ. Retired,
Both residing at Subhash Nagar,
Vane Ali Agar Ali, Kulgaon,
Badlapur (East), Tal. Ambernath,
District Thane – 421 503.

3. The State of Maharashtra
Copy served to APP High Court Mumbai. ... Respondents

Ms Sonali R Chavan i/b Dr Uday P Warunjikar, for the
Applicant in both applications.

Mr Aniket Nangare i/b Mr Hemchandra More, for
Respondents No. 1 and 2.

Mr Yogesh Y Dabke, APP, for respondent / State.

Coram: R.N. Laddha, J.

Date: 8 January 2025

P.C.:

. Heard. Leave to amend. Amendment to be carried out forthwith.

2. By this application, the applicant seeks to challenge the order dated 2 November 2017 passed by the Judicial Magistrate First Class, Khandala, Satara in Criminal Case No.117 of 2016 whereby the learned Magistrate issued the process against the applicant. The order reads thus:

“ORDER

Read complaint. Perused documents on record. Prima facie case is made out 415, 420, 504, 506 of IPC against accused. Hence, issue process, 415, 420, 504, 506 of IPC against on P.F.”

3. A simple review of the impugned order reveals that it is unreasoned, cryptic, and lacks any demonstration of judicial application of mind.

4. While it is settled position in law that the Magistrate is not required to record detailed reasons when issuing a process, such orders cannot be treated as a mere formality. Issuing them routinely without cautiously examining the material available on record or appreciating the relevant statutory provisions risks unjustly subjecting an innocent individual to trial. Before

issuing a process, the Magistrate must exercise judicial discretion with care, scrutinize the material on record, and satisfy themselves that sufficient grounds exists to summon the accused. Once such an opinion is formed, it must record it in the order. An order issuing process that fails to reflect this application of mind is liable to be set aside.

5. A profitable reference in this regard may be made to the decision of the Hon'ble Supreme Court in ***Lalankumar Singh Vs State of Maharashtra, 2022 SCC OnLine 1383.***

6. In view of this, the impugned order of issuance of the process dated 2 November 2017 passed in Criminal Case No.117 of 2016 (Regular Case No.125 of 2017) by the learned Judicial Magistrate First Class, Khandala, Satara, is quashed and set aside. At the same time, it is important to note that the complainant should not be held responsible or made to suffer due to the Magistrate's lapse. Accordingly, the learned Magistrate is directed to pass afresh order based on its own merits and in accordance with the law.

7. The Criminal Application No. 1549 of 2019 stands disposed of accordingly.

(R.N. Laddha, J.)