

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

Writ Petition No.1593 of 2024

Rishikesh Subodh Sapre
Age : 49 yrs, Occ: service
R/o 26/27, Goodwill,
Manmala Tank road,
Mahim, Mumbai -400 016.

.... Petitioner.

Versus

1. Union of India
Secretary, Law & Company Affairs,
Ayakar Bhavan, Marine Line,
Mumbai 400 002.

2. Union of India
through Mr SS Pinsad, ITO (TDS)1(1)(3)
KG Mittal, Ayurvedic Hospital
building, 10th Floor, Charni road (W)
Mumbai 400 002.

3. The State of Maharashtra ... Respondents.

Mr Niteen Pradhan, Advocate, a/w Ms Shubhada Khot for the
petitioner.

Mr MG Patil, APP for respondent /State.

Mr YS Bhate a/w Mr DP Singh for respondents No.1 and 2.

**Coram: R.N. Laddha, J.
Date: 1 April 2025.**

P.C.:

Heard learned Counsel for the parties.

2. The petitioner in this case, is arraigned as accused in private complaint bearing CC No.186/SW/2019, pending before the Additional Chief Metropolitan Magistrate, 38 Court, Ballard Pier, Mumbai. The complaint led to issuance of process for offences punishable under Section 276-B read with 278-B of the Income Tax Act.

3. A bare perusal of the impugned order shows that it is unreasoned and does not demonstrate application of mind. It is settled position in law that the Magistrate is not required to record detailed reasons while passing order of issuance of process. However, such orders are not an empty formality and doing so without cautiously examining the material available on record and appreciating statutory provisions may result in putting the criminal law in motion and summoning innocent individual to stand the trial. Before issuing process the Magistrate must carefully exercise his judicial discretion and scrutinise the material on record. He must satisfy himself and determine whether sufficient grounds exists to summon the accused to stand the trial. Once he forms such an opinion he must record it in his order. When issue process order fails to

reflect such application of mind, it is liable to be set aside. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in *Lalankumar Singh v. State of Maharashtra*¹.

4. In view of this, the impugned order of issuance of process dated 16 July 2019 passed in CC No.186/SW/2019 by the learned ACMM, 38th Court, Ballard Pier, Mumbai, is quashed and set aside. However, at the same time, it must be considered that the complainant should not be held responsible or have to endeavour any consequences due to the lapse on the part of the Magistrate. The learned Magistrate is, therefore, directed to pass an order afresh on its own merits and in accordance with the law.

5. The application stands disposed of accordingly.

[R.N. Laddha, J.]

¹. 2022 SCC OnLine SC 1383