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

Writ Petition No. 4046 of 2024

Aarti Rajkumar Basantani
Aged 36 years, Occ: Service,
residing at Pusp Shelter,
10th Road Khar (W),
Mumbai 400 052

... Petitioner

versus

1. The State of Maharashtra
2. The Securities & Exchange Board
of India, having its Head Office at
SEBI Bhavan, Plot No.C4-A, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai 400 051

... Respondents

Mr Manish Bohra, a/w. Mr Lalit Pal, for the Petitioner.

Ms Sangita E Phad, APP, for respondent No.1/State.

Ms Mahalaxmi Ganpathy, for respondent No.2/SEBI.

Coram: R.N. Laddha, J.

Date: 11 March 2025

P.C.:

. Heard Mr Manish Bohra, the learned Counsel for the petitioner; Ms Sangita E Phad, the learned Additional Public Prosecutor representing respondent No.1/State; and Ms Mahalaxmi Ganpathy, the learned APP representing respondent No.2/SEBI.

2. By this petition, the petitioner seeks to challenge the order dated 21 June 2011 (the impugned order) passed by the Metropolitan Magistrate, 9th Court, Bandra, Mumbai, in C.C. No.12/SW/2011 (subsequently transferred to the Sessions Court vide SEBI Special Case No.259 of 2015), whereby the learned Magistrate issued the process against the petitioner. The order reads thus:

“ORDER

*Complainant is present with Advocate.
Issue summons to Accused returnable 3-10-2011.”*

3. A bare perusal of the impugned order shows that it is unreasonable and does not demonstrate any application of mind. It is a settled position in law that the Magistrate is not required to record detailed reasons while passing an order of issuing process. However, such orders are not an empty formality, and doing so as a matter of routine without cautiously examining the material available on record, and appreciating the statutory provisions, may result in putting the criminal law in motion and summoning an innocent individual to stand trial. Before issuing a process, the Magistrate must carefully exercise his judicial discretion and scrutinise the material on record. The learned Magistrate must satisfy and determine whether sufficient grounds exist to summon the

accused to stand 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 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*.

4. In view of the above, the impugned order of issuance of the process dated 21 June 2011, passed by the learned Metropolitan Magistrate, 9th Court, Bandra, 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 endure any consequences due to the Magistrate's lapse. The learned trial court is, therefore, directed to pass an order afresh on its own merits in accordance with the law.

5. The criminal writ petition stands disposed of accordingly. It goes without saying that, if the occasion arises, the petitioner is not precluded from approaching this Court under Section 482 Cr.P.C. It is made clear that this Court has not examined the merits of the matter and all contentions of the parties are left open.

(R.N. Laddha, J.)