

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

Writ Petition No. 5311 of 2024

(Corrected as per speaking to the minutes of the order dated 28/1/2025)

Abhijit Roy

Age 57 years, Having address at

Flat No.3D, Convent Road,

Block No.10, PO and PS

Entally, Kolkata,

Kolkata West, Bengal - 700 014

and occupier of

M/s. Berger Paints India Limited

having address at Plot No.G-35,

MIDC Jejuri, Tal. Purandar,

District Pune - 412 303.

... Petitioner

versus

1. The State of Maharashtra

Through the office of Public

Prosecutor.

2. Sunil Ragho Thakre

Deputy Director

Industrial Safety & Health

Pune & Inspector,

Maharashtra Kamgar Kalyan

Building, 2nd Floor, Plot No.

G.P. 16, G Block, MIDC,

Thermax Chowk, Chinchwad,

Pune.

... Respondents

Mr Kushal Mor a/w Mr Virendra Vikram a/w Ms Adithi Rao i/b

Khaitan & Co, for the Petitioner.

Ms Manisha R Tidke, APP, for respondent / State.

Coram: R.N. Laddha, J.

Date: 27 January 2025

P.C.:

. Heard Mr Kushal Mor, the learned counsel appearing for the petitioner and Ms Manisha Tidke, the learned Additional Public Prosecutor representing the respondent / State.

2. By this petition, the petitioner seeks to challenge the order dated 16 February 2023 (referred to as the impugned order), passed by the learned Additional Chief Judicial Magistrate, Shivajinagar, Pune, in S.C.C. No.9824 of 2023. The order reads thus :

“Perused complaint. Heard complainant. Issue process against Accused u/s 7-A(2) of the Factories Act, 1948 punishable u/s 92 of the Factories Act, 1948.”

3. The learned counsel for the petitioner submits that the impugned order is cryptic and lacks reasoning and that learned Magistrate did not adhere to the mandate of Section 202 of Code of Criminal Procedure, 1973.

4. A bare perusal of the order reveals that it is unreasoned, cryptic, and does not demonstrate any application of mind.

5. It is a well-established legal principle that the Magistrate is not required to record detailed reasons while passing an order of issuing the process. However, such orders are not mere formalities, issuing them routinely without carefully examining the material available on record and considering the relevant statutory provisions may result in initiating criminal proceedings and summoning innocent individuals to stand trial. Before issuing a process, the Magistrate must exercise judicial discretion and scrutinise the material available on record. The Magistrate must ensure that sufficient grounds exists to summon the accused for trial. Once an opinion is formed, it must be recorded in the order. If the order to issue process does not reflect such application of mind, it is liable to be set aside.

6. A profitable reference in this regard can be made to the decision of *Lalan Kumar Singh Vs. State of Maharashtra 2022 SCC OnLine SC 1383*.

7. In view of this, the impugned order of issue process dated 16 February 2023 passed in S.C.C. No. 9824 of 2023 by the

learned Additional Chief Judicial Magistrate, Shivajinagar, Pune, is quashed and set aside. However, at the same time, it must be considered that the complainant should not be held responsible for the Magistrate's lapse. The learned Magistrate is, therefore, directed to pass the orders afresh on its own merits and in accordance with law.

8. The writ petition stands disposed of in the above terms. It goes without saying that if necessary, the petitioner is free to seek legal redress for his grievance if occasion so arises. It is also made clear that this Court has not examined the merits of the matter and all the contentions of the parties are left open.

(R.N. Laddha, J.)