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

Criminal Writ Petition No.5670 of 2024

Waris Ali Ebrahim Khan
Adult Indian Inhabitant,
Aged about 37 years,
Permanent resident of L-1-A,
502 Oakland Park,
Off. New Link Road,
Andheri (W),
Mumbai-69

... Petitioner

versus

1. The Income Tax Department,
through Pankaj Eknath Nigam,
an officer attached to
Income Tax Department,
having office situated at
Room No.406, C-12, 4th Floor,
Tratakshakar Bhawan, BKC,
Bandra (E), Mumbai 400 051

2. The State of Maharashtra, to be
served Through Public Prosecutor,
High Court (A.S.), Mumbai

... Respondents

Mr Ashok M Saraogi, for the petitioner.
SPP Shabnam Latiwala, for respondent No.1.
Mr MG Patil, APP, for respondent No.2/ State.

**Coram: R.N. Laddha, J.
Date: 6 January 2025.**

P.C.:

. Heard Mr Ashok Saraogi, the learned Counsel for the petitioner and Ms Shabnam Latiwala, the learned Special Public Prosecutor representing respondent No.1/ Income Tax Department.

2. By this petition, the petitioner seeks to challenge the order dated 2 August 2018 (the impugned order passed by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, in CC No.328/SW/18), whereby the learned Magistrate issued the process against the petitioner. The order reads thus:

“ORDER BELOW EXHIBIT-1

*Perused the complaint and documents.
Heard the learned Advocate for the complainant.
The complainant has made out his prima facie
case to issue process, hence process be issued
against the accused for an offence punishable U/s.
276 CC of the Income Tax Act, 1961.”*

3. A bare perusal of the impugned order shows that it is unreasonable and does not demonstrate any application of mind.

4. It is a settled position in law that the Magistrate is not required to record detailed reasons while passing an order of issuing the 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. He 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 an 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*.

5. In view of the above, the impugned order of issuance of the process dated 2 August 2018 passed in CC No.328/SW/18 by the learned Additional Chief Metropolitan Magistrate, 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 endure any consequences due to the Magistrate's failure in fulfilling his duty. The learned Magistrate is, therefore, directed to pass an order afresh on its own merits in accordance with the law.

6. The criminal writ petition stands disposed of accordingly.

(R.N. Laddha, J.)