

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

Criminal Writ Petition No. 6160 of 2024

1. Dr Vinod Rameshwar Goyal
Age 71 years, Director of Surya
Eye Institute and Research Center,
104, Aroto House, 1st Floor,
Saidham, P K Road,
Mumbai - 400 080.

2. Surya Eye Institute and Research Center
104, Aroto House, 1st Floor,
Saidham, P K Road, Mumbai - 400 080.

... Petitioners

versus

The State of Maharashtra
At the instance of Shri Arun
Sakharam Godase, Drugs Inspector,
(Greater Mumbai) Office of Joint
Commissioner, (Greater Mumbai),
Food and Drugs Administration (MS)
having office at Survey No.341,
Opp. Reserve Bank, Bandra Kurla
Complex, Bandra (E), Mumbai - 400 051.

... Respondent

Mr Kezer Kharawala i/b Lex Juris, for the Petitioners.
Mr V N Sagare, APP, for the Respondent / State.

Coram: R.N. Laddha, J.

Date: 20 March 2025

P.C.:

. Heard Mr Kezer Kharawala, the learned Counsel appearing on behalf of the petitioners and Mr V N Sagare, the learned Additional Public Prosecutor representing the respondent / State.

2. By this petition, the petitioners seek to challenge an order dated 11 May 2016 (the impugned order) passed by the learned Metropolitan Magistrate, 15th Court, Mazgaon, At Sewree, Mumbai, in C.C. No.1500086/SW/2016, whereby the learned Magistrate issued the process against the petitioners. The order reads thus:-

ORDER

"Process issued against the accused persons for the offences Under Section 18(c) of Drugs and Cosmetics Act, 1940 punishable Under Section 27(b) (ii) of the said Act and Sections 18-A, 18-B & Section 22(1)(cca) of the Drugs and Cosmetics Act, 1940 punishable Under Section 28-A and Section 27(d) of the said Act returnable on 30/07/2016."

3. A bare perusal of the impugned order shows that it is unreasoned and does not demonstrate any application of mind. It is settled position in law that a 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 the process, the Magistrate must carefully exercise his judicial discretion and scrutinise the material on record. The Magistrate must satisfy himself 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*.

4. In view of the above, the impugned order of issuing of process dated 11 May 2016, by the learned Metropolitan Magistrate, 15th Court, Mazgaon, At Sewree, 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 Magistrate, is therefore, directed to pass an order afresh on its own merits and in accordance with the law.

5. The Criminal Writ Petition stands disposed of accordingly.

(R.N. Laddha, J.)