

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

Cri.Writ Petition No.6190 of 2024

Aditya Kumar Sinha

Age: 28 years, Occ: Service

Having address at :

EF/28, Tata Worker Flat

Majhiladi alias Jagidi, near

Durga Mandap, Dhanbad

Jharkhand-828 110.

Presently residing at

B/208, Poonam Darshan, Poonam

Nagar, Off Mahakali road,

Andheri (E) Mumbai-400 093.

..... Petitioner.

Vs.

Amit Vijaykumar Bhatia

Age : 52 years, An adult,

Having address at:

A-205, Andheri Mistry Apt CHS

parsi Panchayat Road, Andheri (E)

Mumbai-69

2. The State of Maharashtra

(represented by the office of

PP High Court, Bombay)

.... Respondents.

Mr Shreyansh Mamania i/by Chirag M Shah for the
petitioner.

Respondent No.1 present in-person.

Mr SS Pednekar, APP for respondent/State.

Coram : R.N.Laddha, J.
Date : 10 February 2025.

P.C. :

Heard learned Counsel for the petitioner and respondent No.1 in person.

2. By this petition, the petitioner seeks to challenge the order dated 23 July 2024 passed by the learned Metropolitan Magistrate, 14th Court, Girgaon, Mumbai, in CC No.245/SUM/2024 whereby the learned Magistrate issued process against the petitioner. The order reads thus :

“Verified the complaint. Perused the documents on record. Perused affidavit of the complainant under Section 202 of the Code of Criminal Procedure, 1973 (In short ‘Cr.P.C.’). Heard Ld. Advocate for the complainant. It appears that the complainant has made out prima facie case against accused. Hence, issue process against accused under Section 138 of the Negotiable Instruments Act, 1881.”

3. A plain reading of the impugned order reveals that it is unreasoned and does not demonstrate application of mind. In catena of decisions, the Hon’ble Supreme Court has held that the Magistrate is not a silent spectator at the stage of summoning the accused. 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 exist to summon the accused to stand trial. Once he forms such an opinion, he must record it in his order. Although the Magistrate is not required to record reasons for issuing process, such orders are not an empty formality. When an 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 decisions in *Inox Air Products (P) Ltd. v. State of Andhra Pradesh*¹, *Lalankumar Singh v. State of Maharashtra*², and *Pepsi Foods Ltd. v. Special Judicial Magistrate*³.

4. In view of this, the impugned order of issuance of process dated 23 July 2024, passed in CC No.245/SUM/2024 by the learned Metropolitan Magistrate, 14 Court, Girgaon, 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

1. 2025 SCC OnLine SC 2009.

2. 2022 SCC OnLine SC 1383

3. (1998) 5 SCC 749.

endure any consequence due to the Magistrate's lapse. The learned Magistrate is, therefore, directed to pass the order afresh, on its own merits in accordance with the law.

5. The petition stands disposed of accordingly.

6. It goes without saying that, if necessary, the Applicants are free to seek legal recourse for their grievances if the occasion so arises. It is made clear that this Court has not examined the merits of the case, and all contentions of all the parties are left open.

[R. N. Laddha,J.]