

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

Criminal Application No.53 of 2024

1. Khurshed Cavas Pavri
Age 81 years, Occ: Homemaker
R/o 4 Wadia House,
22, NS Patkar Marg,
Mumbai-400 007.
 2. Meheru Phiroze Panthaki
Age 88 yrs, Occ: Homemaker,
R/o 31/32, Sun Ville Apt,
685 Khareghat Road, Dadar Parsi
Colony, Dadar (E), Mumbai-400 014.
 3. Seva Sadan Society
A Charitable Trust bearing Registration
No.F-125 (Bom)
Through its authorised representative
Mr Herzel Jacob Simon
Having office at
30-31, Pandita Ramabai Road,
Near Gamdevi police station,
Mumbai-400 007. Applicants.
- Vs.
1. Municipal Corporation of Gr.
Mumbai
 2. The State of Maharashtra ... Respondents.

**With
Criminal Application No.69 of 2024**

1. Khurshed Cavas Pavri
Age 81 years, Occ: Homemaker
R/o 4 Wadia House,
22, NS Patkar Marg,
Mumbai-400 007.
 2. Seva Sadan Society
A Charitable Trust bearing Registration
No.F-125 (Bom)
Through its authorised representative
Mr Herzel Jacob Simon
Having office at
30-31, Pandita Ramabai Road,
Near Gamdevi police station,
Mumbai-400 007. Applicants.
- Vs.
1. Municipal Corporation of Gr.
Mumbai
 2. The State of Maharashtra
Respondents.

**With
Criminal Application No.56 of 2024**

1. Khurshed Cavas Pavri
Age 81 years, Occ: Homemaker
R/o 4 Wadia House,
22, NS Patkar Marg,
Mumbai-400 007.
2. Seva Sadan Society
A Charitable Trust bearing Registration
No.F-125 (Bom)

Through its authorised representative
Mr Herzel Jacob Simon
Having office at
30-31, Pandita Ramabai Road,
Near Gamdevi police station,
Mumbai-400 007. ... Applicants.

Vs.

1. Municipal Corporation of Gr.
Mumbai
2. The State of Maharashtra ... Respondents.

**With
Criminal Application No.54 of 2024**

1. Khurshed Cavas Pavri
Age 81 years, Occ: Homemaker
R/o 4 Wadia House,
22, NS Patkar Marg,
Mumbai-400 007.
2. Seva Sadan Society
A Charitable Trust bearing Registration
No.F-125 (Bom)
Through its authorised representative
Mr Herzel Jacob Simon
Having office at
30-31, Pandita Ramabai Road,
Near Gamdevi police station,
Mumbai-400 007. ... Applicants.

Vs.

1. Municipal Corporation of Gr.
Mumbai
2. The State of Maharashtra .. Respondents.

Mr Niteen V Pradhan a/w Shubhada Khot i/by Ameeta Kuttikrishnan, Danish Patel a/w Shambhavi Desai for applicants.

Mr PP Chavan for Respondent No.1/MMC.

Ms MR Tidke, APP for respondent/State.

Coram : R.N.Laddha, J.

Date : 7 January 2025.

P.C. :

Heard the learned Counsel for the parties.

2. By these applications, the applicants seek to challenge the orders passed by the learned Metropolitan Magistrate, 42nd Court, Shindewadi, Dadar, in CC No.2076/SS/2023 dated 20.03.2023 under Sections 394 and 471 of the Mumbai Municipal Corporation Act, 1988 (the MMC Act); CC No.3514/SS/2019; CC No.3512/SS/2019 and CC No.3513/SS/2019 dated 25.07.2019, under Sections 328-A and 471 of the MMC Act.

3. The learned Senior Counsel for the applicants, highlights the orders of issuance of process and submits that the orders are cryptic, lack reasoning, and show non-application of mind.

4. A bare perusal of the impugned orders show that they

are unreasoned 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 Magistrate must satisfy himself and determine whether sufficient grounds exists 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 profitable reference in this regard may be made to the decision of the Supreme Court in *Lalan Kumar Singh Vs. State of Maharashtra*,¹.

5. In light of the above, the impunged orders of issuance of process dated 20.03.2023 and 25.07.2019, passed in CC No.2076/SS/2023, CC No.3514/SS/2019, CC No.3512/SS/

1 2022 SCC OnLine SC 1383.

2019 and CC No.3513/SS/2019, by the learned Metropolitan Magistrate, 42nd Court, Shindewadi, Dadar, Mumbai, are quashed and set aside. However, at the same time, it must be considered that the complainant should not be held responsible or have to endeavour any consequences due to the Magistrate's failure in fulfilling his duty. The learned Magistrate is, therefore, directed to pass the orders afresh on its own merits in accordance with the law.

6. Accordingly, the criminal applications stand disposed of in the above terms.

[R. N. Laddha,J.]