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

Criminal Application No.1732 of 2024

1. Khurshed Cavas Pavri
Age 81 years, Occu: Homemaker
R/o. 4 Wadia House,
22 NS Patkar Marg,
Mumbai 400 007
2. Meheru Phiroze Panthaki
Age 88 years, Occu: Homemaker
R/o. 31/32, Sun Ville Apartment,
685 Khareghat Road,
Dadar Parsi Colony,
Dadar (East), Mumbai 400014
3. Seva Sadan Society
A Charitable Trust bearing
Registration No.F-125 (Bom)
Through its Authorised Representative -
Herzel Jacob Simon
Having office at:
30-31, Pandita Ramabai Road,
Near Gamdevi Police Station,
Mumbai 400007

... Applicants

versus

1. Municipal Corporation of
Greater Mumbai
Through -
Digambar R Kawale
Assistant Law Officer,
(Legal Department)

“D” Ward Office, Nana Chowk,
Grant Road (West),
Mumbai 400 007

2. The State of Maharashtra

... Respondents

Mr Niteen Pradhan, a/w. Ms Shubhada Khot and Ms Ameeta Kuttikrishnan, for the applicants.

Mr PP Chavhan, for respondent No.1/BMC.

Mr Swapnil Pednekar, APP, for respondent No.2/ State.

Coram: R.N. Laddha, J.
Date: 12 March 2025.

P.C.:

. Heard the learned Counsel for the parties.

2. By this application, the applicants seek to challenge the order passed by the learned Metropolitan Magistrate, 42nd Court, Shindewadi, Dadar, in CC No.6214/SS/2023 dated 12 September 2023 under Sections 394 and 471 of the Mumbai Municipal Corporation Act, 1988 (the MMC Act).

3. The learned Counsel for the applicants highlights the order of issuance of process and submits that the order is cryptic, lacks reasoning, and reflects a failure to apply judicial mind.

4. A plain reading of the impugned order reveals that it is 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 ***Lalankumar Singh Vs State of Maharashtra, 2022 SCC OnLine 1383***.

5. In light of the above, the impugned order of issuance of process dated 12 September 2023, passed in CC No.6214/SS/2023, by the learned Metropolitan Magistrate, 42nd Court, Shindewadi, Dadar, 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 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 application stands disposed of in the above terms.

(R.N. Laddha, J.)