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

Criminal Application No.1765 of 2024

1. Sana Khan,
Age: 38 years, Occ: Business,

2. Anas Saiyed,
Age: 30 years, Occ: Business,
Both residing at Flat No.141,
Movie Tower CHS Ltd.,
Oshiwara, Andheri,
Mumbai – 400 053

... Applicants

versus

1. The State of Maharashtra
Through Public Prosecutor
High Court (Appellate Side)
Bombay.

2. The Senior Inspector of Police,
Matunga Police Station,
Mumbai.

3. Arif Ahmed Mansoor Ahmed Shaikh
Residing at 27/28 Patel Building,
1st Floor, Room No.01, Wanjawadi Road,
Hussain Thakur Clinic, Mahim,
Mumbai – 400 016

... Respondents

Mr Rizwan Merchant, a/w. Mr Sultan Khan and Ms Khyati
Shah, for the applicant.

Ms Sangita E Phad, APP, for respondent No.1/ State.

Ms Anjali Jaiswal, for respondent No.3.
Respondent No.3-present-in-person.

Coram: R.N. Laddha, J.

Date: 4 April 2025.

P.C.:

. Heard the learned Counsel for the parties and the learned APP.

2. By this application, the applicant seeks to challenge the order dated 18 October 2024 (the impugned order) passed by the learned Judicial Magistrate First Class, 30th Court, Kurla, Mumbai, in C.C.No.3000769/Misc./2024, whereby the learned Magistrate issued the process against the applicant. The order reads thus:

“ORDER

- 1. Issue process against both accused for the offence punishable under section 153, 295-A, 420, 406, 120-B r/w. Section 34 of Indian Penal Code.*
- 2. Complainant to comply the provision under Section 204(3) and (4) of the Code of Criminal Procedure, 1973.*
- 3. This case be registered as warrant trial i.e. SW by disposing of this miscellaneous case number.*
- 4. The application is disposed of accordingly.”*

3. A bare perusal of the impugned order shows 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. 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 in the decision of the Hon'ble Supreme Court in *Lalankumar Singh Vs State of Maharashtra, 2022 SCC OnLine 1383*.

4. In light of the foregoing, the impugned order dated 18 October 2024, whereby process was issued in C.C.No. 3000769/Misc./2024 by the learned Judicial Magistrate, First Class, 30th Court, Kurla, Mumbai, is quashed and set aside. However, it is imperative to note that the complainant should not be made to suffer any prejudice or adverse consequences arising from the lapse on the part of the Magistrate. Accordingly, the learned Magistrate is directed to reconsider the matter and pass a fresh, reasoned order

on its own merits in accordance with the law.

5. The criminal writ application stands disposed of accordingly.

(R.N. Laddha, J.)