

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

Criminal Writ Petition No.1642 of 2025

Sunil Chimanlal Gandhi

Age: 78 years, Occu: Business,

62, Omdariya Mahal-3, 80,

Nepeansea Road,

Opp. Walasingham School,

Malabar Hill,

Mumbai – 400 006

... Petitioner

versus

1. Vaibhav Ulhas Nalawade,

having his registered work

office at F-3, First Floor,

Eternity Mall, Commercial

Premises, Near Teen Hath Naka,

Thane – 400 604

2. The State of Maharashtra

Through Public Prosecutor

... Respondents

Mr Sanjeev Kadam, Senior Advocate, a/w. Ms Varsha Thorat,
Ms Sabeena Mahadik and Mr Mangesh Avhade, for the
petitioner.

Mr Jayesh Kalanke, for respondent No.1.

Mr Arfan Sait, APP, for the respondent/ State.

Coram: R.N. Laddha, J.

Date: 3 April 2025.

P.C.:

. Heard the learned Counsel for the parties.

2. By this petition, the petitioner seeks to challenge the order dated 7 October 2023 passed by the learned Judicial Magistrate First Class, Thane, in RCC No.446 of 2024, whereby the learned Magistrate issued the process against the petitioner. The order reads thus:

“ORDER

Heard Ld. Advocate for Complaint. Perused all documents annexed with the Complaint. Also verified complaint on oath. The documents relied upon by the complaint, prima facie established case against award to issue process against him. Then process is issued against award for Commission of extension plots 420, 406, 467, 468, 471 of IPC r/on 20.01.2024.

This case shall be registered as RCC.”

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 profitable 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 view of this, the impugned order of issuance of the process dated 7 October 2023 passed in RCC No.446 of 2024 by the learned Judicial Magistrate, First Class, Thane, 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 in accordance with the law.

5. The criminal writ petition stands disposed of accordingly. It is made clear that this Court has not examined the merits of the matter and all contentions of the parties are left open.

(R.N. Laddha, J.)