

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

CRIMINAL APPLICATION NO.845 OF 2025

SATISH
RAMCHANDRA
SANGAR

Digitally signed by
SATISH RAMCHANDRA
SANGAR
Date: 2025.08.11
16:21:23 +0530

1. **Anjani Kumar Prasad (Director)**
Age : 65 Years, Occupation : Service
2. **Vishal Grover (Director)**
Age : 49 Years, Occupation : Service,
Both having their office address at:-
M/s. Archroma International India
Pvt. Ltd., Lighthall B Wing, Saki Vihar
Road, Andheri-East, Mumbai.

...Applicants

Versus

1. **The State of Maharashtra**
2. **Yogesh Gopichand Kowe**
Deputy Director, Industrial Safety and Health,
Government of Maharashtra, Mumbai.

...Respondents

Mr.Pranav Badheka (Sr.Advocate) i/b. Mr.Rutvij Solanki & Mr.Sohan Patil:-	Advocate for Applicants.
Mr.H.J.Dedhia:-	APP for Respondent No.1 -State.
Mr.Yogesh Gopichand Kowe:-	Respondent No.2.

CORAM : S. M. MODAK, J.

DATE : 7th AUGUST 2025

P. C. :-

1. Heard learned Senior Advocate Shri.Badheka for the Applicants
and learned APP.

2. There was a private complaint filed by the Respondent No.2 – Deputy Director, Industrial Safety and Health, Mumbai before the Court of Additional Chief Judicial Magistrate–Sewree–Dadar. It is for contravention of the various provisions of the Factories Act, 1948 and the Maharashtra Factories Rules, 1963. The punishment is provided as per Section 92 of the Factories Act. The present two Applicants are described as Accused persons. They are described as Directors of M/s.Archroma International (India) Private Limited. Learned Magistrate on this complaint on 21st February 2025 passed the following order:-

“01. *Issue process against the accused for the offence punishable under section 92 of Factories Act.*

02. *Issue summons against the accused returnable on 23.4.2025.”*

3. Two contentions are raised in this Application. One is non-compliance of the provisions of Section 223 of Bharatiya Nyaya Sanhita, 2023 (“BNSS”) and second is there is non-application of judicial mind by ‘*issuing the process*’. Learned Senior Advocate Mr.Badheka relied upon the observations of Hon’ble Supreme Court in case of ***Kushal Kumar Agarwal V/s. Directorate of Enforcement***¹.

¹ 2025 SCC OnLine SC 1221

4. Whereas according to learned APP, the verification of the Complainant is not required if he is a public servant. To certain extent, Mr.Dedhia is right but not fully.

5. As per the provisions of Section 223 of BNSS, once the complaint is filed to the Magistrate, following are the requirements:-

- (a) Prior to taking cognizance, he has to examine the Complainant on oath and the witnesses present, if any.
- (b) He has to hear the proposed Accused prior to taking cognizance.

6. As per the second proviso, the examination of the Complainant if he is a public servant is dispensed with. However, still the second requirement of hearing the proposed Accused still holds good. This is what interpreted in the above mentioned case. There was a complaint filed as per the provisions of Prevention of Money Laundering Act, 2002 (“PML Act”). The process was issued without hearing the Accused. The Hon’ble Supreme Court observed in Para No.6 that:-

“The proviso to sub-section (1) of Section 223 puts an embargo on the power of the Court to take cognizance by providing that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard”.

(Emphasis laid)

7. The ratio laid down in the said judgment is perfectly applicable to the facts before us. I am inclined to set aside the '*process issue*'(d) order. Once it is set aside, I am not going to the question of non-application of judicial mind. Hence the following order:-

ORDER

- (i) **The Application is allowed.**
 - (ii) The order dated 21st February 2025 passed by the Court of Judicial Magistrate First Class, 29th Court, Dadar(Sewri), Mumbai thereby '*issuing the process*' for the offence under Section 92 of the Factories Act, 1948 **against these Applicants is quashed and set aside.**
 - (iii) The Court of Judicial Magistrate First Class, 29th Court, Dadar(Sewri) to issue a notice to both these Applicants and **grant them an opportunity of hearing and then pass the necessary order on the said Complaint.**
 - (iv) All the Applicants are directed to appear before the Court of Judicial Magistrate First Class, 29th Court, Dadar(Sewri) on **10th September 2025** either personally or through their learned Advocate.
8. With these observations, **the Application stands disposed of.**

[S. M. MODAK, J.]