



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 595 OF 2024

Bhushan s/o Ganesh Lande

Aged about 24 years,

Occupation : Service,

R/o. Dighi (Sonpuri), Tah. Nandura,

District – Buldhana.

... APPLICANT

Versus

1. State of Maharashtra,

Through Police Station Officer,

Police Station Malakapur Gramin,

Tah. & Dist. Buldhana.

2. Sunita w/o Mukesh Kshirsagar

Aged about 42 years,

Occupation : Service,

R/o. Vitali, Tah. Nandura,

District – Buldhana.

... NON-APPLICANTS

Mr. Dhruv Sirpurkar, Advocate for applicant.

Mr. Nitin Autkar, APP for non-applicant No.1/State.

Mr Amol Hunge, Advocate for non-applicant No.2

CORAM : RAJNISH R. VYAS, J.
DATE : 22.09.2025.

ORAL JUDGMENT:

Heard.

(2) **Admit.** Taken up for final disposal with the consent of
learned counsel for both the parties.

(3) The applicant, before this Court, is the original accused No.2 against whom the process is issued under Sections 504, 506 read with Section 34 of the Indian Penal Code. The applicant has challenged the order dated 25.09.2023 issuing process by invoking inherent jurisdiction of the Court. The accused No.1 has not challenged the said order.

(4) I have gone through the order dated 25.09.2023, by the Magistrate which reads thus:

“Perused record. Heard Ld. Advocate for the complainant. The complainant alleges the commission of offences punishable under sections 504, 506 read with 34 of the Indian Penal Code at the hands of accused. The complainant has been examined on oath U/Sec. 200 of Cr.P.C. Prima facie there are sufficient ground to proceed against accused for the offences punishable U/s. 504, 506 read with 34 of the Indian Penal Code. Hence, following order is passed –

ORDER

Issue process against accused Nos. 1 and 2 for the offences punishable U/s. 504, 506 read with 34 of the Indian Penal Code.”

(5) According to Mr. Amol Hunge, learned counsel for non-applicant No.2, recording of reasons are not required while issuing the process. In order to buttress his contention, he has relied upon the following judgments:

- i. Bhushan Kumar & Anr. .v/s. State (NCT of Delhi) and anr., reported in 2012 All.S.C.R 1360
- ii. U. P. Pollution Control Board .v/s. M/s. Mohan Meakins Ltd. and ors., reported in 2000 ALL MR (Cri.) 1046 (S.C.)
- iii. Smt. Nagawwa .v/s. Veeranna Shivalingappa Konjalgi and ors. reported in 2014 ALL SCR (OCC 225).

According to learned counsel for non-applicant No.2, the reasons are required to be given only at the time of dismissal of complaint and therefore, the order passed is perfectly just and proper.

(6) Per contra, Mr. Dhruv Sirpurkar, learned counsel for the applicant has relied upon the judgment delivered by the Hon'ble Apex Court in case of *Lalankumar Singh and others .v/s. State of Maharashtra*, reported in, *2022 SCC Online SC 1383*.

(7) I have gone through the above cited judgments. So far as contention of Mr. Hunge, learned counsel for the non-applicant No.2 is concerned, that no reasons are required to be recorded is difficult to digest. Reasons are soul of justice and though no detailed reasons are required, prima facie application of mind is required to be reflected in the order issuing the process. Therefore, the judgment cited by Mr. Hunge, learned counsel for the non-applicant No.2 are not squarely applicable to the case in hands. The

Hon'ble Apex Court in case of *Lalankumar Singh (supra)* has observed in para No. 38 as under :

*“38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of *Sunil Bharti Mittal v. Central Bureau of Investigation*, which reads thus:*

51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of

process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

(8) In the aforesaid background and considering the dictum of Lalankumar's case (supra), I am of the opinion that the Magistrate has not recorded the reason for issuance of process. Hence, I proceed to pass following order:

ORDER

- i. Criminal application is allowed.
- ii. Order issuing process passed by the learned Judicial Magistrate

First Class, Nandura, in Summary Criminal Case No.233/2023 is hereby quashed and set aside.

iii. The learned Magistrate is directed to decide the question of issuance of process in accordance with the law considering the dictum of Hon'ble Apex Court in the case of Lalankumar Singh and Ors.

Criminal application stands disposed of.

[RAJNISH R. VYAS, J.]

Prity