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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.627 OF 2026

Ikhalaq Abdul Gaffar Dabawala : Applicant
Versus
The State of Maharashtra and anr. : Respondents.

Mr. Satyavrat Joshi i/by Adv. Indrayanee Pandit for the
Applicant.

Mr. Sukanta Karmakar, APP for the Respondent/State.

CORAM : ASHWIN D. BHOBE, J.

DATED : 15 APRIL 2026

PC:-

1. At the outset, Mr. Satyavrat Joshi, learned Advocate for the Applicant seeks leave to delete the Respondent No.2 from the array of the cause title. Mr. Sukanta Karmakar, learned APP for the Respondent/State, does not oppose the request made by Mr. Satyavrat Joshi, learned Advocate for the Applicant. In view of the request of Mr. S. Joshi and the no objection given by Mr Sukanta Karmakar learned APP, leave is granted to delete Respondent No. 2 from the array of the cause title. Mr. S. Joshi, states that the amendment to the cause title of the present Application would be carried out forthwith.

2. By the present Application, the Applicant has sought the following substantive relief :-

“(a) That the hon’ble Court may be pleased to exercise its powers under Section 482 of the Code of Criminal Procedure, 1973 (corresponding to section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023) and may be pleased to quash and set aside the Order of issuance of process passed by the Addl. Chief Judicial Magistrate, 9th Court, vide roznama dated 02.08.2022.”

3. The Applicant was earlier before this Court by way of Criminal Writ Petition No. 4631 of 2021, challenging FIR No. 454 of 2021. Criminal Writ Petition No. 4631 of 2021 was disposed of by order dated 24th September 2025, which reads as follows:

“(1) As the Police have already filed charge-sheet in the present crime and the trial Court has taken cognizance, learned counsel for the Petitioner, on instructions seeks leave withdraw Petition with liberty to either challenge the Order of taking cognizance or to file an Application for discharge before the trial Court.

1.1) Leave and liberty granted.

2) Disposed off as withdrawn, with aforesaid liberty.”

4. Mr. Satyavrat Joshi, learned Advocate for the Applicant, submits that the Applicant has chosen the first option to challenge the order taking cognizance. By referring to page no. 28, he submits that the order dated 2nd August 2022, taking cognizance, is illegal inasmuch as it is a rubber-stamped cognizance order that discloses total non-application of mind. He relies on the decision of this Court in the case of *Mala Awadhbihari Bharadwaj and anr. Vs. The State of Maharashtra and anr.*¹. He therefore submits that the impugned order be set aside and the matter be remitted to the Additional Chief Magistrate, 9th Court, Bandra, Mumbai / the

¹ Decided on 11-02-2026 in Criminal Application No.1169 of 2025.

Magistrate having jurisdiction, for reconsideration at the stage of taking cognizance.

5. Mr. Satyavrat Joshi, learned Advocate for the Applicant, states that the charge has not been framed since 24th September 2025 till date.

6. Mr. Sukanta Karmakar, learned APP for the Respondent/State, in all fairness, submits that the order dated 2nd August 2022 impugned in the present Application, being a rubber-stamp order, needs to be set aside and the matter remitted to the Additional Chief Magistrate, 9th Court, Bandra, Mumbai / the Magistrate having jurisdiction at the stage of taking cognisance.

7. Mr. Satyavrat Joshi, learned Advocate for the Applicant, states that the impugned rubber-stamped cognizance order dated 2nd August 2022 appears at page 28 of the paper book. The same is illegible. The order, as made available by Mr. Satyavrat Joshi, learned Advocate for the Applicant, reads as follows:

“Chargesheet filed today
Prima facie case Made Out
Cognizance of the offence against
Accused u/s 448, 465, 467, 471 and 34 IPC is taken
Accused released/~~absent~~ on bail
copies furnished
Issue summons to accused

Addl. Chief Metropolitan Magistrate.
9th Court, Bandra Mumbai”

8. This Court, in the case of *Mala Awadhbihari Bharadwaj (supra)*, in paragraph nos. 29, 30, 31, 32 and 33 has observed as follows:

“29. The order taking cognizance, which the Applicant has impugned in this Application, is a “Rubber Stamped Cognizance” without assigning any reasons. The order taking cognizance dated 28.08.2023, passed by the Magistrate, reads as follows:

“Perused the record u/s. 173 of the Code of Criminal Procedure. Considering the material, sufficient ground exist to issue process against the accused for the offence punishable under Sections 498(A), 506, 323 & 504 of the IPC.”

30. The Hon’ble Supreme Court in the case of Pawan Kumar Sharma v/s. State of Uttaranchal², in paragraphs 2 to 6 has held as under :-

“2. In the State of Uttaranchal (now known as State of Uttarakhand) there exists a strange practice. The Magistrates take cognizance of offences and issue summons in terms of Section 202 of the Code of Criminal Procedure on “rubber stamped” orders.

3. A distinction exists between an order taking cognizance and an order issuing process. Before process is issued, the Court concerned must apply its judicial mind. It may, not only apply its mind as to whether on the basis of the allegations made in the complaint petition and the statements made by the complainant and his witnesses, a prima facie case has been made out for issuing processes but also must consider as to whether a case has been made out in terms of proper provisions of the Penal Statute for issuance of process for alleged commission of the offences vis-a-vis, the allegations made.

4. Appellant herein seriously contend that even if the submissions made in the complaint petition are given face value and taken to be correct in their entirety, no case has been made out for taking cognizance under Section 304(B) of the I.P.C.

5. In State of Karnataka v. Pastor P. Raju (2006) 6 SCC 728, this Court has clearly made out a

² 2007 SCC OnLine SC 1599

distinction between an order taking cognizance of an offence and an order of issuance of process stating:

“13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.”

6. We, therefore, are of the opinion that impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed.”

31. In the case of State of Karnataka and Another v/s. Pastor P. Raju³, the Hon’ble Supreme Court, in paragraph no. 13, has distinguished between an order taking cognizance of an offence and an order issuing process :-

“13. It is necessary to mention here that taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at a subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.”

32. The Hon’ble Supreme Court in the case of Sunil Bharti Mittal v/s. Central Bureau of Investigation⁴, in paragraphs 51 to 53 has held as follows:

“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.

³ (2006) 6 SCC 728

⁴ (2015) 4 SCC 609

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.

33. As per the above-mentioned pronouncements, the Hon’ble Supreme Court has held that taking cognizance is a judicial act that requires the application of the mind. The Hon’ble Supreme Court has deprecated the practice of taking cognizance through “Rubber Stamp Cognizance”. Thus, cognizance taken by the Magistrate through a Rubber Stamped Order is illegal, warranting interference by this Court.”

9. Considering the aforementioned facts of the case at hand, the impugned order dated 2nd August 2022, which discloses non-application of mind, warrants interference in this petition.

10. In view of the above and by consent of the parties, the following order is passed.

A] The impugned order dated 2nd August 2022 is quashed and set aside. The charge-sheet registered as Criminal Case No. PW/0901454/2022 is remitted to the Additional Chief Judicial Magistrate, 9th Court, Bandra, Mumbai / the Court having jurisdiction, to the stage of taking cognisance for consideration in accordance with law.

11. Criminal Application No.627 of 2026 is disposed of.

(ASHWIN D. BHOBE, J.)