



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

CRIMINAL WRIT PETITION NO.900/2025

Partha Sarathy Sarkar,
Address:20, Surana Layout,
Anant-Nagar, Nagpur 440013

...PETITIONER

VERSUS

1. State of Maharashtra,
the Law and Judiciary Department
located at Mantralaya, 5th Floor,
Main Building, Mumbai-400032.
2. Superintendent,
Nagpur District Court,
Address:- AIR Square, Civil Lines,
Nagpur – 400 001.
3. Neeraj Murgai.
4. Conjeevaram L Bharadwaj.
5. Director/s of Future General India
Life Insurance Co.
Address of respondent Nos 3 to 5
3rd Floor, Milestone Building,
Wardha Road, Nr. Panchsheel Square,
Ramdaspath, Nagpur, Maharashtra
440012.

...RESPONDENTS

Petitioner in person with Mr. Nicky Pokar, Advocate for petitioner.
Mr. N. B. Jawade, APP for respondent No.1/State.
Mr. S.V. Bhutada, Advocate for respondent No.4.

CORAM : M. M. NERLIKAR, J.
DATE : 06.01.2026

ORAL JUDGMENT :

Heard the petitioner-in-person, learned APP for State and learned counsel for respondent No.4.

2. The petitioner-in-person has assailed the order dated 17.10.2025, wherein the order of issue process was passed against the present respondents for the offence punishable under Section 193, 196, 209 and 120-B of the Indian Penal Code ("IPC") with further direction to issue summons to the non-applicant Nos. 1 to 3.

3. Brief facts:-

It appears from the record that the present petitioner has made the complaint invoking the powers under Section 340 of the Code of the Criminal Procedure ("Code"). In view of that, the Superintendent, District Court Administration, District

Court Nagpur in view of direction in Criminal Miscellaneous Application No. 445/2023, filed a complaint before the Adhoc District Judge-4 and Additional Sessions Judge, Nagpur. The present case is a unique case, wherein the original applicant/complainant has assailed the impugned order, though the order is in his favour. However, according to him, the order is not as per the law laid down by the Supreme Court in case of ***Sunil Bharti Mittal Vs. Central Bureau of Investigation, (2015) 4 SCC 609***. The petitioner-in-person submits though the order is in his favour, it is his duty to bring to the notice of this Court that neither the order contain brief reasons, nor there is any application of mind. It also does not specify against which accused what material is available on record and therefore, he submits that the order issuing process is bad-in-law and against the settled position of law so also the law declared by the Supreme Court in the case of Sunil Bharti Mittal (*supra*).

4. On the other hand, the learned counsel appearing for respondent No.4 submits that the petitioner who is party-in-person does not have any locus and the present petition is pre-

matured as he is not aggrieved by the said impugned order, and therefore, he cannot challenge the same. Secondly, he submits that the petition is filed under Article 227 of the Constitution of India, wherein this Court can only to see whether the Court below has committed any jurisdictional error or not and the fact remains that the petitioner cannot challenge the said order when there is no jurisdictional error under Article 227 of the Constitution of India.

5. Upon hearing the petitioner-in-person, the learned counsel for respondent No.4 and the learned APP for State, it appears to this Court that the petitioner-in-person has challenged the order dated 17.10.2025, wherein the process was issued against the non-applicant Nos. 1 to 3 for the offence punishable under Sections 193, 196, 209 and 120-B of the IPC and accordingly summons were also issued to non-applicant Nos. 1 to 3.

6. After perusal of the impugned order passed below Exh.1, it appears that the Superintendent, District Court Administration, District Court Nagpur has filed the complaint,

however the said complaint appears to be filed on the basis of application filed by the present petitioner i.e. Criminal Miscellaneous Application No.445/2023 under Section 340 of the Code before the Adhoc District Judge-4 and Additional Sessions Judge, Nagpur. After passing the detailed order, the application filed by the present petitioner at Exh.1 was allowed and the direction was issued to the Superintendent, District Court Administration, District Court Nagpur to file complaint for the offence punishable under Sections 193, 196, 209, 108 and 120-B read with Section 34 of the IPC. It is only after passing of this order dated 25.10.2024 by the Adhoc District Judge-4 and Additional Sessions Judge, Nagpur, the Superintendent, District Court Administration, District Court Nagpur has filed the complaint and thereupon, the impugned order was passed. Admittedly the order dated 17.10.2025 passed below Exh.1 wherein issue process was ordered, appears to be against the principles laid down by the Supreme Court in the case of Sunil Bharti Mittal (*supra*), wherein the Supreme Court has relied on several judgments including the case of

Pepsi Foods Ltd. Vs. Judicial Magistrate, (1998) 5 SCC 749,

wherein in para 28, it was observed as under:-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

19. Even as regards the availability of the remedy of filing an application for discharge, the same would not mean that although the allegations made in the complaint petition even if given face value and taken to be correct in its entirety, do not disclose an offence or it is found to be otherwise an abuse of the process of the court, still the

High Court would refuse to exercise its discretionary jurisdiction under Section 482 of the Code of Criminal Procedure."

Further, in paragraph 46 of the said judgment, the Supreme Court has relied upon another judgment of the Supreme Court in case of ***GHCL Employees Stock Option Trust Vs. India Infoline Ltd, (2013) 4 SCC 505***, wherein the Supreme Court has observed in paragraph 19 which read as under:-

"19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against Respondents 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them."

The Supreme Court further in para 53 has observed as under:-

"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 a 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.”

7. Considering the above ratio laid down by the Supreme Court, it is crystal clear that when there are more than one accused persons, it is imperative on the part of the learned Magistrate to apply his mind before issuing process against each of the accused persons. So far as the present impugned order is concerned, it appears that the Court has not dealt in brief with material which was available on record against each of the accused persons and failed to apply its mind to the material available on record. Merely observing that he has gone through the material i.e. documentary or the oral would not be sufficient and therefore, the learned Magistrate ought to have considered the material at least in brief against each of the accused person as mandated by the Supreme Court.

8. As argued by the learned counsel for respondent No.4 that the petitioner does not have any locus, does not sustain as at his behest the proceedings have been initiated. Therefore,

the present petitioner is having locus as he is the original complainant in the proceedings. Further, the argument of the learned counsel for respondent No.4 that the petitioner is not aggrieved by the impugned order and therefore, cannot challenge the order, this argument also does not sustain for the reason that even if the order is in favour of the petitioner, still the order is *per se* illegal and he can challenge the same. In fact, it was expected from the learned Magistrate to pass the order in accordance with law and the law laid down by the Supreme Court in catena of judgments.

9. In view of above, the impugned order dated 17.10.2025 is quashed and set aside. The matter is remanded back to the learned 18th Joint Civil Judge Junior Division and Judicial Magistrate First Class Court No.6 Nagpur. The concerned Court shall take into consideration the material placed before it and also take into consideration the mandate of the law which is laid down and discussed supra before passing the order of issuance of process.

10. The petition is allowed in above terms.

(M. M. NERLIKAR , J.)

Gohane