IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1716 OF 2025

1. Mahavir Singh Charan,
   Male, Aged about 60 years, Occ: Retd.,
   Residing at 217, Block 5,
   Rangoli Gardens, Panchyawala,
   Jaipur – 302034.

2. Garima Charan,
   Female, Aged about 55 years, Occ: Nil,
   Residing at 217, Block 5,
   Rangoli Gardens, Panchyawala,
   Jaipur – 302034 …Petitioners

Versus.

1. The State of Maharashtra,
   Through Station House Officer,
   Santacruz Police Station, Linking Road,
   Santa Cruz West, Mumbai

2. Dimple Barhat @ Dimple Achlawat
   73, Narendra Apartments,
   Near Rajesh Khanna Garden,
   Gazdhar Bandh, Santacruz (W),
   Mumbai - 400052 …Respondents

Ms. Tasmiya Taleha, learned Advocate for the Petitioners.

Mr. Rahul Aarote, learned Advocate for Respondent.

Mr. Sukanta Karmakar, learned APP for the Respondent – State.

CORAM : ASHWIN D. BHOBE, J.

Date : 23rd March, 2026

JUDGMENT :

1. Heard Ms. Tasmiya Taleha, learned Advocate for the Petitioners, Mr. Sukanta Karmakar, learned APP for the Respondent – State and Mr. Rahul Aarote, learned Advocate for the Respondent No. 2.

2. By order dated 04.12.2025, this Court took the view that an arguable case was made out to impel the Court to entertain this Petition.

3. Though the Petitioners have raised several challenges regarding the proceedings arising from Criminal Case No. 06/SW/2022 for offences punishable under Sections 498A, 406, read with Section 34 of the Indian Penal Code, 1860, (hereafter "IPC"), pending before the file of the Metropolitan Magistrate, 71st Court, Bandra, Mumbai, (hereafter "Magistrate"), Ms. Tasmiya Taleha, Mr. Sukanta Karmakar, learned APP, and Mr. Rahul Aarote have limited their arguments to contest the Order dated

19.04.2024 passed by the Magistrate in Criminal Case No. 06/SW/2022 (hereafter "impugned order"), whereby the Magistrate issued process against the Petitioners.

4. Rule. Rule made returnable forthwith and with the consent of the parties, heard finally.

5. Material facts relevant for the adjudication of the present Petition are that the marriage between the Petitioner's Son and Respondent No. 2 (Complainant) was solemnized on 12.12.2016 in Jodhpur. In June 2021, matrimonial disharmony led the Petitioner's son to file divorce proceedings against Respondent No. 2 in the Family Court, Jodhpur, which were subsequently transferred to the Mumbai Family Court. Respondent No. 2, alleging harassment, filed a complaint before the Senior Inspector in Santacruz West, Mumbai. Based on the complaint filed by Respondent No. 2, the Magistrate issued process on 19.04.2024 under Section 498A , 406 read with Section 34 of the IPC, in Criminal Case No. 06/SW/2022.

6. Ms. Tasmiya Taleha, learned Advocate for the Petitioners,

submits that the impugned order, in issuing the process, reveals a lack of judicial consideration by the Magistrate. She submits that the impugned order was issued mechanically without considering the facts of the case or examining the documents. She argues that the impugned order is illegal and therefore liable to be set aside, which should result in the dismissal of the entire proceedings bearing C.C. No. 06/SW/2022. In the alternative, she submits that this Court, in its writ jurisdiction, should consider the case on its merits to determine whether a case for issuance of process has been established.

7. Mr. Sukanta Karmakar, learned APP for the Respondent – State, supports the impugned Order and submits that no interference is warranted.

8. Mr. Rahul Aarote, learned Advocate for Respondent No. 2, submits that the impugned order shows that the Magistrate applied his mind and limited the issuance of process to Sections 498A, 406 read with Section 34 of IPC. He submits that the Magistrate, having not issued process under Sections 505 and 506 of IPC, demonstrates his considered decision. Without prejudice to

the above contentions, he submits that if this Court finds the impugned order requires interference, then the matter should be remanded to the Magistrate for reconsideration. He argues that when exercising jurisdiction under Article 226 of the Constitution of India, this Court should not assume the role of the Magistrate in deciding whether to issue process, this responsibility should remain with the Magistrate at the initial stage. He relies on the decision of this Court in the case of *Krishnagopal Raghunathprasad Maheshwari and Ors.* v. Food Inspector And Anr.[1]

9. Heard Arguments. Perused records.

10. The Hon'ble Supreme Court in the case of *Mahmood Ul Rehman v. Khazir Mohammad Tunda and Ors.*[2] in paragraph Nos. 8 to 20 has made the following observations: -

> ***8.****The question is: how does a Magistrate, while taking cognizance of an offence on complaint, indicate his satisfaction regarding the ground for proceeding against the accused?*

1 (2019) SCC OnLine Bom 1162
2 (2015) 12 SCC 420

9. In Pepsi Foods Ltd. v. Judicial Magistrate [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , this Court has held that exercise under Section 204 CrPC of summoning an accused in a criminal case is a serious matter and that the process of criminal law cannot be set into motion in a mechanical manner. It was also held that 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 governing the issue. To quote: (SCC p. 760, para 28)

"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."

10. In taking recourse to such a serious process, this Court has consistently held that the Magistrate must apply his mind on the allegations on commission of the offence. In Darshan Singh Ram Kishan v. State of Maharashtra [Darshan Singh Ram Kishan v. State of Maharashtra, (1971) 2 SCC 654 : 1971 SCC (Cri) 628] , it was held that the process of taking cognizance does not involve any formal action, but it occurs as soon as the Magistrate applies his mind to the allegations and thereafter takes judicial notice of the offence. To quote: (SCC p. 656, para 8)

"8. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report."

11.*In one of the early decisions, Emperor v. Sourindr[Emperor v. Souri, ILR (1910) 37 Cal 412] , a Division Bench of the Calcutta High Court has taken the same view: (ILR p. 417)*

"… taking cognizance does not involve any formal action, or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence."

12. *In Nagawwa v. Veeranna Shivalingappa Konjalgi [Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736 : 1976 SCC (Cri) 507] , this Court took the view that in the process of taking cognizance and issue of process to the accused, the Magistrate has to form an opinion that a prima facie case is made out against the accused. At that stage, the Magistrate is also competent to consider whether there are inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant. To quote: (SCC p. 741, para 5)*

"5. … It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the

evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused."

13. *In Kishun Singh v. State of Bihar [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] , this Court reiterated the position that where, on application of mind, the allegations in the complaint, according to the Magistrate, if proved, would constitute an offence, cognizance is to be taken of the offence so as to proceed further against the accused. To quote: (SCC p. 23, para 7)*

"7. … Even though the expression 'take cognizance' is not defined, it is well settled by a catena of decisions of this Court that when the Magistrate takes notice of the accusations and applies his mind to the allegations made in the complaint or police report or information and on being satisfied that the allegations, if proved, would constitute an offence decides to initiate judicial proceedings against the alleged offender he is said to have taken cognizance of the offence. It is essential to bear in mind the fact that cognizance is in regard to the offence and not the offender. Mere application of mind does not amount to taking cognizance unless the Magistrate does so for proceeding under Sections 200/204 of the Code…."

14. *In State of W.B. v. Mohd. Khalid [State of W.B. v. Mohd. Khalid, (1995) 1 SCC 684 : 1995 SCC (Cri) 266] , it has been held by this Court that while exercising the power to take cognizance, a Magistrate has to see whether there is any basis for initiating judicial proceedings. At para 43, it has been held as follows: (SCC p. 696)*

"43. … Section 190 of the Code talks of cognizance of offences by Magistrates. This expression has not been defined in the Code. In its broad and literal sense, it means taking notice of an offence. This would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings or for other purposes. The word 'cognizance' indicates the point when a Magistrate or a Judge first takes judicial notice of an offence. It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons."

15. *In Kanti Bhadra Shah v. State of W.B. [Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722 : 2000 SCC (Cri) 303] , this Court has taken the view that it is quite unnecessary to write detailed orders at the stage of issuing process. In U.P. Pollution Control Board v. Mohan Meakins Ltd. [U.P. Pollution Control Board v. Mohan Meakins Ltd., (2000) 3 SCC 745] , the position was further clarified that it was not necessary to pass a speaking order at the stage of taking cognizance. In Chief Controller of Imports and Exports v. Roshanlal Agarwal [Chief Controller of Imports and Exports v. Roshanlal Agarwal, (2003) 4 SCC 139 : 2003 SCC (Cri) 788] , this Court considered the situation where the impugned order passed by the Magistrate reads as follows: (SCC p. 145, para 8)*

"8. … 'Cognizance taken. Register the case. Issue summons to the accused.'"

It was held that: (SCC p. 145, para 9)

"9. … At the stage of issuing the process to the accused, Magistrate is not required to record reasons."

Kanti Bhadra Shah [Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722 : 2000 SCC (Cri) 303] and U.P. Pollution Control Board [U.P. Pollution Control Board v. Mohan Meakins Ltd., (2000) 3 SCC 745] were also referred to in the said decision.

16. In Jagdish Ram v. State of Rajasthan [Jagdish Ram v. State of Rajasthan, (2004) 4 SCC 432 : 2004 SCC (Cri) 1294] , the law was restated holding that at the stage of issuing process to the accused, the Magistrate is not required to record reasons. However, he has to be satisfied that there is sufficient ground for proceeding and such satisfaction is not whether there is sufficient ground for conviction. To quote: (SCC p. 436, para 10)

"10. … The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons."

17. In Chief Enforcement Officer v. Videocon International Ltd. [Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] , this Court held that taking cognizance has no esoteric or mystic significance in criminal law and it connotes that a judicial notice is taken of an offence, after application of mind. To quote: (SCC p. 499, paras 19-20)

"19. The expression 'cognizance' has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. 'Taking cognizance' does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a

valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance."

18. *In U.P. Pollution Control Board v. Bhupendra Kumar Modi [U.P. Pollution Control Board v. Bhupendra Kumar Modi, (2009) 2 SCC 147 : (2009) 1 SCC (Cri) 679] , at para 23, the position has been discussed as follows: (SCC p. 154)*

"23. It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused."

19. *In Bhushan Kumar v. State (NCT of Delhi) [Bhushan Kumar v. State (NCT of Delhi), (2012) 5 SCC 424 : (2012) 2 SCC (Cri) 872] , the requirement of application of mind in the process of taking cognizance was reiterated. It was further held that summons is issued to notify an individual of his legal obligation to appear before the Magistrate as a response to the alleged violation of law. It was further held that in the process thus issued, the Magistrate need not explicitly state the reasons. Paras 11 to 13 contain the relevant discussion, which read as follows: (SCC pp. 428-29)*

"11. In Chief Enforcement Officer v. Videocon International Ltd. [Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] (SCC p. 499, para 19) the expression 'cognizance' was explained by this Court as 'it merely means "become aware of" and when used with reference to a court or a Judge, it connotes "to take notice of judicially". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.' It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings

by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

12. A 'summons' is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.

13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued."

20.*The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the*

> *allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter.*

11. The Hon'ble Supreme Court in the case of *Pawan Kumar Sharma v/s. State of Uttaranchal*[3], in paragraphs 3, has held as under:-

"*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.*

12. The Hon'ble Supreme Court in the case of *State of Karnataka*

3. 2007 SCC OnLine SC 1599.

v. Pastor P. Raju[4]*,* in paragraph 13, has held as under:-

> *"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."*

13. From the dictum of the aforementioned cases, at the stage of issuing process, the Magistrate primarily considers the allegations in the complaint or the supporting evidence. Though, there is no need to issue detailed orders at this stage, it is only necessary to be satisfied prima facie that there are sufficient grounds to proceed against the accused.

14. The impugned order in the case at hand merely states that the Magistrate perused the report submitted by the Police and the verification statement of Respondent No. 2, which led to the issuance of process. The impugned order does not reflect that the

4 (2006) 6 SCC 728

Magistrate has applied his mind to the facts of the case and the law governing the issue. There is no indication in the impugned order that the Magistrate examined the nature of the allegations in the complaint or the supporting evidence, oral or documentary. The issuance of the process is done mechanically without the application of the mind. Thus, the Magistrate failed to exercise judicious discretion.

15. The contention of Mr. Rahul Aarote, learned Advocate for Respondent No. 2, that the application of mind must be inferred from the impugned order, since the Magistrate did not take cognizance or issue process for all the offences mentioned in the complaint and that the process was limited only to the offences specified in the impugned order, cannot be accepted. This is because the impugned order-issuing process under Sections 498A and 406, read with Section 34 of the Indian Penal Code, 1860, does not indicate that the Magistrate explicitly applied his mind to the matter while ordering the issuance of process for those offences.

16. The case of Krishnagopal Raghunathprasad Maheshwari

(supra) involved the Magistrate's order issuing process being set aside by the Sessions Court on the ground that it was issued mechanically without application of mind, and the matter was remanded to the Magistrate for reconsideration. The challenge to the order passed by the Sessions Court, to the limited extent of remanding the matter for reconsideration by the Accused therein, was dismissed by this Court, which held that the Magistrate's order-issuing process lacked application of mind, thereby justifying intervention by the Sessions Court. The request, similar to the one made by Ms Tasmiya Taleha, learned Advocate for the Petitioner, for this Court to consider the merits of the matter in exercise of writ jurisdiction, was raised in Krishnagopal Raghunathprasad Maheshwari (supra), which request was rejected by this Court on the grounds that it would cause injustice to the complainant.

17. Since the process of issuing the impugned order against the Petitioners does not meet the legal requirements and suffers from the vice of non-application of mind, the impugned order is illegal and warrants interference.

18. Issuance of process is within the domain of a Magistrate.

Since the impugned order is found to be illegal, the matter must be reconsidered by the Magistrate. It is appropriate for the Magistrate to carefully assess the case in accordance with the law. The scheme of BNSS provides effective remedies to the aggrieved party against the order-issuing process. Therefore, the request by Ms. Tasmiya Taleha for this Court to examine the merits of the case in its writ jurisdiction and/or to dismiss C.C. No. 06/SW/2022 is rejected.

19. In view of the above, the impugned order dated 19.04.2024, passed by the Metropolitan Magistrate, 71st Court, Bandra, Mumbai in C.C. No. 06/SW/2022 is quashed and set aside. The matter is remitted to the Metropolitan Magistrate, 71st Court, Bandra, for fresh consideration and further action, if required to be taken in accordance with law.

20. Rule is made absolute in the above terms. No orders as to costs.

21. Criminal Writ Petition No. 1716 of 2025 disposed of.

(ASHWIN D. BHOBE, J.)