

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.21307 of 2017**

Arising Out of PS.Case No. -516 Year- 2013 Thana -HILSA District- NALANDA  
(BIHARSHARIFF)

- =====
1. Abdhesh Prasad aged about 72 years Son of late Sita Ram Prasad
  2. Urmila Devi aged about 70 years W/o Sri Abdhesh Prasad

Both Resident of Mohalla- Shiv Nagar, At + P.O. +P.S.- Hilsa, District-  
Nalanda.

.... .... Petitioners

Versus

The State of Bihar

.... .... Opposite Party

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**Appearance :**

For the Petitioner/s : Mr. Vikramdeo Singh, Advocate  
Mr. Dilip Kumar, Advocate  
For the State : Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 05-12-2017**

Heard learned counsel for the petitioners and learned  
counsel for the State.

2. This application under Section 482 of the Code of  
Criminal Procedure (for short 'Cr.P.C.') has been filed by the  
petitioners for quashing the order dated 23.03.2017 passed by the  
learned Additional Chief Judicial Magistrate-II, Hilsa (Nalanda) in  
Hilsa P. S. Case No. 516 of 2013 by which cognizance has been  
taken against the petitioners for the offences punishable under  
Sections 323, 341, 504 and 498-A read with 34 of the Indian Penal



Code.

3. It is submitted by the learned counsel for the petitioners that the petitioners are father-in-law and mother-in-law of the informant Reena Kumari on whose written report dated 21.11.2013, Hilsa P. S. Case No. 516 of 2013 was registered and investigation was taken up and on completion of investigation, the police submitted report under Section 173(2) of the Cr.P.C., vide charge-sheet No. 9 of 2014, dated 28.01.2014 whereby the Investigating Officer did not send up the petitioners for trial, but without application of judicial mind, the learned ACJM-II, Hilsa, Nalanda summoned the petitioners to face trial along with the charge-sheeted accused Rajnish Kumar, vide impugned order dated 23.03.2017. He submitted that no reason for differing with the police report has been assigned in the impugned order dated 23.03.2017.

4. On the other hand, learned counsel for the State submitted that from perusal of the impugned order, it would be manifest that finding a prima facie case against the petitioners, learned Magistrate took cognizance of the offences against the petitioners and summoned them to face trial.

5. I have heard learned counsel for the parties and perused the record.



6. It would be manifest from perusal of the impugned order dated 23.03.2017 that the learned ACJM-II, Hilsa, Nalanda has passed the order taking cognizance of the offences and summoned the petitioners along with one Rajnish Kumar by merely filling in blanks in a format pre-prepared for the purpose.

7. The impugned order passed by the learned ACJM-II, Hilsa, Nalanda in a pre-prepared format is reproduced hereunder :-

Dated:- **23.03.2017** Record was put up today in which already I.O. has submitted charge sheet no/F.F. no **09/14** dated **28.01.201** against the accused person namely **Rajnish Kr. @ Fonu Dada** For the offences punishable U/S **341, 323, 504, 498-A I.P.C.** Of the I.P.C./ Arms Act.

Seen, and perused the case diary as well as material available on the record i.e. reports e.t.c. On perusal of the case diary and record along with relevant documents, I find that there is sufficient material available on the record as well as in the case-diary, which compels the court to draw inference that prima-facie case, is, made out, against, the accused, namely **(1) Rajnish Kumar (2) Awdesb Pd. (3) Urmila Devi** considering the material available on the record.

Accordingly, cognizance for the offences U/S **341, 323, 504, 498-A/34 I.P.C.** Of I.P.C./Arms Act is taken against the accused shown in column no. .... of the charge



sheet/F.I.R. O/C is directed to issue summon against the accused persons. Put up on 29.06.2017 for trial and disposal in accordance with law.”

8. Let it be noted that except the underlined portion, which have also been highlighted in preceding paragraph, rest is in a format pre-prepared for the purpose, which reflects that the order has been passed mechanically without application of judicial mind.

9. It is well settled by now that summoning an accused in a criminal case is a serious matter. The need for proper application of mind by the courts at the stage of summoning has been highlighted by the Supreme Court in **Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others**, reported in (1998) 5 SCC 749, in para 28 as follows:-

“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 scrutinize 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. Keeping in mind the discussions made, hereinabove and the ratio laid down by the Supreme Court in **Pepsi Foods Ltd. and Another (supra)**, the impugned the order dated 23.03.2017 passed by the learned Additional Chief Judicial Magistrate-II, Hilsa (Nalanda) in Hilsa P. S. Case No. 516 of 2013 is set aside and quashed. The matter is remitted back to the court for passing the order afresh in accordance with law after taking into consideration the materials available on record.

11. I further direct the learned Magistrate to refrain from passing orders in formats prepared in advance containing blanks to be filled in with formal details, as has been done in the present



case.

12. With these observations and directions, the application stands allowed.

(Ashwani Kumar Singh, J.)

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