

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.37053 of 2014**

Arising Out of PS.Case No. -219 Year- 2013 Thana -SIMRI District- BUXAR

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Vidya Narayan Tiwary @ Sonelal Tiwary S/o Govardhan Tiwary Resident of  
Village Dhanha (Majhwari), Police Station Simri, District Buxar.

.... .... Petitioner/s

Versus

1. The State of Bihar
2. Dropadi Devi wife of Prithvi Paswan, resident of Village- Dhanha (Majhwari),  
P.S. Simri, District- Buxar.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Siddharth Harsh, Adv.  
Mr. Gopal Swaroop Dubey, Adv.

For the Opposite Party No.1 : Mr. Sanjay Kumar, APP

For the Opposite Party No.2 : Mr. Mahesh Prasad No.2, Adv.  
Mr. Rewti Kant Raman, Adv.

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**Date: 06-09-2017**

Heard Shri Siddharth Harsh, the learned counsel for  
the petitioner, Shri Sanjay Kumar, the learned A.P.P. appearing for  
the State and Shri Mahesh Prasad No.2, the learned counsel for the  
Opposite Party No.2.

2. The short facts of the case are that upon a written  
complaint filed by the Opposite Party No.2, namely, Dropadi Devi on  
04.11.2013, an FIR bearing Simri Police Station Case No. 219 of  
2013 dated 04.11.2013 was registered by the police under Sections  
147, 148, 149, 341, 323, 307, 379/504 of the Indian Penal Code.

3. It has been alleged in the said complaint that ten  
accused persons, including the petitioner herein had arrived at the  
house of the Opposite Party No.2 armed with *lathi*, *danda*, *garasa* etc.



and asked her about her husband and beated her. In the meantime, her husband reached there, whereafter all the accused persons started beating her husband. Upon hearing the sound of assault, the *Bhaisur* of the complainant and other persons of the family had arrived there, whereupon, the accused persons had also assaulted them. The accused persons had thereafter entered in the house of the complainant and picked up a box with a sum of Rs. 8,000/-.

4. The learned Chief Judicial Magistrate, Buxar vide order dated 13.01.2014 has taken cognizance for the offences punishable under Sections 147, 148, 149, 341, 323, 307, 379/504 of the Indian Penal Code against the ten accused persons including the petitioner herein. The aforesaid order dated 13.01.2014 is under challenge before this Court in the present proceedings.

5. The learned counsel for the petitioner has submitted that even the police had found the entire occurrence to be false, as against the petitioner herein, hence had though submitted charge sheet against the other nine accused persons, it had filed a final form against the petitioner herein.

6. The learned counsel for the Opposite Party No.2 Shri Mahesh Prasad No.2 submits that the records would bear it out that the petitioner was present at the alleged place of occurrence and it is wrong to contend that he has been falsely implicated in the present



case on account of him being the son of the 'Sarpanch' of the Gram Panchayat.

7. The learned Additional Public Prosecutor appearing for the State has supported the investigation of the police.

8. I have perused the materials on record and heard the learned counsel for the parties.

9. This Court by an order dated 17.10.2014 had issued notice to the Opposite Party No.2 and called for a carbon copy of the case diary of the connected Simri P.S. Case No. 219 of 2013. The carbon copy of the case diary has been placed before this Court and from bare perusal of the same, it transpires that almost all the witnesses of the prosecution, in their statement under Section 161 of the Cr. P. C. before the police, have stated that the petitioner herein, namely, Vidya Narayan Tiwary @ Sonelal Tiwary was not present at the time of incident and was nowhere to be seen near the place of occurrence. Even the allegation of the Opposite Party No.2 does not connect the petitioner herein with any specific overt act or any injury sustained by the husband of the Opposite Party No.2 or the other accused persons. From perusal of the case diary it is further apparent that the police having found no evidence whatsoever against the petitioner herein and had submitted final form against him, though the police had submitted charge sheet dated 31.01.2014 under Sections



147, 148, 149, 341, 323, 307, 379/504 of the Indian Penal Code against the nine accused persons, which did not include the name of the petitioner herein and he was shown as “Not sent up”.

**10.** However, the learned Chief Judicial Magistrate, Buxar by an order dated 13.01.2014 has taken cognizance against the petitioner herein as well.

**11.** From a bare perusal of the impugned order dated 13.01.2014, it is apparent that the learned Chief Judicial Magistrate has neither given any reason for differing with the final form submitted by the police against the petitioner herein nor had applied his mind to the facts and law applicable thereto. It is trite law that the order taking cognizance summoning the accused must reflect application of mind since being called to appear before the criminal court as an accused is serious matter affecting one’s dignity, self respect and image in society. Hence, it is all the more important that an order taking cognizance should be passed after proper application of mind and after furnishing the reason for differing with the final form, submitted by the police.

**12.** In this connection the reference be had to a judgment reported in the case of **Mehmood UL Rehman v. Khazir Mohammad Tunda and Ors** [(2015)12 SCC 420]. In this regard it would be relevant to quote paragraphs no. 9, 11, 14, 21 & 22 of the



judgment rendered by the Hon'ble Supreme Court in the case of **Mehmood UL Rehman v. Khazir Mohammad Tunda and Ors** (supra), herein below:

**9.** In Pepsi Foods Limited and another v. Special Judicial Magistrate and others,<sup>1</sup> this Court has held that exercise under Section 204 of Cr.P.C. 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 : **(1998) 5 SCC 749: (AIR 1998 SC 128).**

"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."

**11.** In one of the early decisions, Emperor v. Sourindra Mohan Chuckerbutty,<sup>3</sup> a Division





Section 190(1)(a) of CrPC followed by Section 204 of CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 of CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 of CrPC, the High Court" under Section 482 of CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before criminal court as an accused is serious matter affecting one's dignity, self respect and image in society. Hence, the



process of criminal court shall not be made a weapon of harassment.”

**13.** For the reasons stated herein above, I find that the order dated 13.01.2014 passed by the learned Chief Judicial Magistrate, Buxar, against the petitioner herein, is not sustainable in the eye of law or otherwise also, hence it is quashed and all the criminal prosecution emanating therefrom as against the petitioner herein, are also quashed.

**14.** It is made clear that quashing of the criminal prosecution, as against the petitioner herein or for that matter the setting aside of order dated 13.01.2014 as against the petitioner herein will not constitute an opinion by this Court on the merits of the case. So far as the other accused persons are concerned, the prosecution will continue against them without being prejudiced by the present order.

**15.** The petition is allowed. There shall be no order as to costs.

**(Mohit Kumar Shah, J)**

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