

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40041 of 2016

Arising Out of PS.Case No. -309 Year- 2015 Thana -PATLIPUTRA District- PATNA

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1. Sudhir Kumar Sinha S/o Late Kamla Prasad
 2. Punam Sinha W/o Sudhir Kumar Sinha
 3. Ashutosh Kumar @ Ashutosh Kumar Sinha S/o Sudhir Kumar Sinha
All r/o Kayast Tola near Christian High School. P.S. Saharsa, District- Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar
2. Dipti Shankar w/o Amrit Sinha, r/o C.K. Road Tari Mohalla Nala Road, Ara,
P.S.- Town Thana, District- Bhojpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Neeraj Kumar, Adv.

For the Opposite Party/s : Mr. R. B. Roy Raman, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-08-2017

By this application preferred under Section 482 of the Code of Criminal Procedure (For short “CrPC”), the petitioners seek quashing of the order dated 29.02.2016 passed by the learned Judicial Magistrate 1st Class, Patna in Patliputra P.S. Case No. 309 of 2015 whereby cognizance of the offence punishable under Section 498-A/34 of the Indian Penal Code along with Sections 3 and 4 of the Dowry Prohibition Act has been taken against the petitioners.

2. It has been contended by the learned counsel for the petitioner that the impugned order of cognizance of the offence under Section 498-A of the Indian Penal Code as well as Sections 3 and 4 of



the Dowry Prohibition Act against the petitioners dated 29.02.2016 passed by the learned Judicial Magistrate 1st Class, Patna in Patliputra P.S. Case No. 309 of 2015 has been passed by filling up the blanks in the typed format. He has contended that the order has been passed mechanically without due application of mind.

3. On the other hand, learned counsel for the State has contended that though the impugned order has been passed on the printed format by filling gaps, there are sufficient materials against the petitioners for taking cognizance of the offence punishable under Section 498-A, 34 of the Indian Penal Code along with Sections 3 and 4 of the Dowry Prohibition Act. He has contended that an elaborate order is not required to be passed to take cognizance of the offence.

4. I have heard learned counsel for the parties and perused the impugned order dated 29.02.2016.

5. Without going into the merits of the allegation, this Court is of the considered opinion that the impugned order cannot be sustained as it has been passed without application of judicial mind in a mechanical manner. The learned Judicial Magistrate has simply filled up the blanks in the typed format.

6. True it is that an elaborate order is not required to be passed to take cognizance and to issue summons, but the order must at least disclose that there has been an application of judicial mind.



The practice of filling up of blanks in readily typed format for passing judicial orders is highly objectionable.

7. 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. & Anr. Vs. Special Judicial Magistrate and Ors.* [(1998) 5 SCC 749] 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 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.”

8. It would be trite to remark that taking of cognizance and summoning of an accused in a criminal case has serious consequence on the liberty of the accused, as pursuant to such order, he is made to take bail and face trial for a criminal offence. An order of cognizance



passed in a standardized format by filling up the perfunctory details buttress an *ex facie* lack of application of mind.

9. Keeping in mind the discussions made hereinabove and the ratio laid down by the Supreme Court in ***Pepsi Foods Ltd. & Anr.*** (Supra), the impugned order dated 29.02.2016 is quashed. The matter is remitted back to the Judicial Magistrate 1st Class, Patna for passing order afresh after perusing the allegations made in the FIR, the statements of the witnesses recorded under Section 161(3) of the Cr.P.C. and the police report submitted under Section 173(2) of the Cr.P.C.

10. The learned Judicial Magistrate is directed to be cautious in future. She should refrain from signing orders on readily typed or printed format.

11. With the aforesaid observation and direction, the application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
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