

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36746 of 2016

Arising Out of PS.Case No. -56 Year- 2015 Thana -PURUSHOTTAMPUR District-
WESTCHAMPARAN(BETTIAH)

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1. Dhanesh Patel son of Jagrup Patel Resident of Village & P.S. : Balthar, District :
West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Singh, Adv.
Mr. Amrendra Nath Verma, Adv.
For the Opposite Party/s : Mr. Humayou Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 01-12-2017

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order dated 27.02.2016m passed by the learned Additional Chief Judicial Magistrate, Bettiah, West Champaran in Trial No. 1698 of 2016 arising out of Purshottampur P.S.Case No. 56 of 2015 by which he has taken cognizance of the offences punishable under Sections 171(J) and 188 of the Indian Penal Code and Section 3 of the Defacement of Property Act.

2. It is submitted by the learned counsel for the petitioner that on the basis of the allegations made in the FIR no offence would be attracted against the petitioner. He submitted that the banner hung



behind the beetle shop was meant for greetings of Ramnavami festival and was not at all connected with the election. He submitted that the said banner was in the name of Dhanesh Prasad Patel and no investigation was carried on the point that Dhanesh Prasad Patel was alias name of Dhanesh Patel. He contended that the learned Magistrate mechanically took cognizance of the offences under Sections 171(J) and 188 of the Indian Penal Code with Section 3 of the Defacement of Property Act without adverting to the facts and law involved in the case.

3. On the other hand, learned counsel for the State submitted that the FIR is based on the written report submitted by the Block Education Officer-cum-Magistrate Flying Squad. The informant alleged in the written report that he found a blue colour banner of 6' x 4' size with the petitioner's photograph and Ramnavami wishes at Songrahua Chowk and seized the same in presence of two independent witnesses Firangi and Shivshankar. He contended that the allegation made in the FIR was found true during investigation and the learned Magistrate took cognizance of the offence. According to him, in view of the allegations made in the FIR, which was found true during investigation, no error can be found with the order passed by the learned Magistrate whereby cognizance has been taken and the petitioner has been summoned to face trial.



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

5. The proforma order dated 27.02.2016 passed by the learned Additional Chief Judicial Magistrate, Bettiah, West Champaran reads as under :-

“The case is put up for hearing on the point of cognizance. Head and perused the case record.

This case is registered for the offence u/s 171(J)/188 IPC & 3 Defacement of Property Act against solo accused Dhanesh Patel. After investigation police has submitted charge sheet with case diary u/s 171(J)/ 188 IPC & 188 Defacement of Property Act against solo accused Dhanesh Patel accused persons named in column no 11 of the charge sheet.

The case diary provides sufficient material to make out a prima facie case u/s 171(J)/188 IPC & 3 Defacement of Property Act against solo accused Dhanesh Patel accused persons named in column no 11 of the charge sheet. Accordingly cognizance is taken. O/c is directed to register in trail register and issue summon for appearance of accused persons on 20.05.16.”

6. It is to be noted that except the underlined words in the aforestated order dated 27.02.2016 the other contents of the order are in a format pre-prepared for the purpose of recording cognizance order. It would be pertinent to note here that taking of cognizance and summoning of accused in a criminal case has serious consequence on the liberty of an accused as pursuant to such order he has to take bail and face trial in a criminal case. Thus, the order of cognizance in a



standardized format by filling up only perfunctory details buttress an ex facie lack of application of mind in the order of taking cognizance and summoning an accused.

7. 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 [(1998) 5 SCC 749]***. The Supreme Court in the said case observed that summoning of an accused in a criminal case is a serious matter and the criminal law cannot be set into motion as a matter of course.

8. In ***Fakhruddin Ahmad Vs. State of Uttaranchal and Another, [(2008) 17 SCC 157]***, the Supreme Court held as under :-

“17. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender.”

9. Keeping in mind the discussions made above and the ratio laid down by the Supreme Court in the aforesaid decisions, the



impugned order dated 27.02.2016 cannot be sustained. It is set aside accordingly. The matter is remanded back to the court of Additional Chief Judicial Magistrate, Bettiah, West Champaran for passing order afresh after taking into consideration the materials available on record.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05-12-2017
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