

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18992 of 2017

Arising Out of PS.Case No. -66 Year- 2016 Thana -MAHILA P.S. District- MUZAFFARPUR

- =====
1. Ashutosh Kumar son of Shiv Kumar Singh
 2. Shiv Kumar Singh son of Late Rampravesh Singh
 3. Punam Devi wife of Shiv Kumar Singh
 4. Mirtunjay Kumar son of Shiv Kumar Singh
 5. Umesh Singh son of Late Brij Bihari Singh @ Bipin Bihari Singh
 6. Annu Kumari @ Annu Devi @ Annu Singh wife of Umesh Singh

All are resident of village- Ram Nagar, P.S.-Gaay Ghat, District-
Muzaffarpur

.... Petitioner/s

Versus

1. State of Bihar
2. Priyanka Kumari wife of Ashutosh Kumar daughter of Krishnakant Singh,
resident of Mohalla- Ahiyapur, P.S.-Ahiyapur, District- Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Niraj Kumar Sanidh, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 20-11-2017

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 'the Cr.P.C.') has been filed for
quashing the order dated 28.10.2016 passed by the learned Additional



Chief Judicial Magistrate,-VII, Muzaffarpur in connection with Mahila P.S. Case No.66 of 2016 dated 24.05.2016 whereby the learned Additional Chief Judicial Magistrate took cognizance of the offences punishable under Section 498A of the Indian Penal Code (for short 'the I.P.C') and Sections 3 and 4 of the Dowry Prohibition Act (for short 'D.P.Act').

3. The petitioners were made named accused in Mahila P.S. Case No.66 of 2016 dated 24.05.2016 registered under Section 498A of the the I.P.C. and Sections 3 and 4 of the D.P.Act. On completion of investigation, the police found the allegations to be true and submitted charge-sheet against them. After receipt of the charge-sheet, the learned Magistrate took cognizance of the offences under which charge-sheet was submitted.

4. Learned counsel for the petitioners submitted that the order has been passed mechanically by filling up certain blanks in the pre-printed format. He submitted that even without there being any specific allegation against the petitioners, the learned Additional Chief Judicial Magistrate summoned them to face trial for the offences alleged. He contended that summoning an accused in criminal case is a serious matter and, thus, need for proper application of mind by the court 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 and **Fakhruddin Ahmad vs. State of Uttaranchal and Another**, reported in (2008) 17 SCC 157.

5. On the other hand, learned counsel for the State submitted that though the order has been passed by the learned Magistrate by filling up blanks in the pre-printed format, the same cannot be held to be illegal. He submitted that the FIR contains ingredients of the offences alleged and, in course of investigation, the allegations made have been found true and, therefore, the learned Magistrate rightly took cognizance of the offences and summoned the petitioners.

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

7. The order impugned reads as under:-

“The I.O. has submitted charge sheet u/s 498(A) I.P.C. and 3/4 D.P.Act against accused persons as noted in column no.11 of charge sheet.

Perused the F.I.R., Charge Sheet, Case Diary and record from which it appears that a prima-facie case make out against the accused persons as noted in column.-11 of the C.S. for the above said offences.

Accordingly cognizance has been taken u/s 498(A)I.P.C. and 3/4 D.P.Act against the accused



persons as noted in column no.11 of charge sheet. Present case is kept in personal file for disposal.

Office to issue summon against the accused persons for their appearance and facing trial.

22/12/2016 for appearance.” (underlining mine)

8. Let it be noted that except the underlined portion in the impugned order all the contents are pre-printed. An order by filling up only Sections and the date mentioned in the charge-sheet by the police in format pre-prepared for the purpose is impermissible in law. The manner in which the order has been passed is somewhat disturbing. More so, in a case involving cognizance offence. The learned Magistrate has not even bothered to record the names of persons summoned to face trial in the impugned order.

9. The need for proper application of mind by the court at the stage of summoning has been highlighted by the Supreme Court in **Pepsi Foods Ltd. and Another vs. Special Judicial Magistrate and Others** (supra) in paragraph 28 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.”

10. In Fakhruddin Ahmad Vs. State of Uttaranchal and Another reported in (2008) 17 SCC 157 in paragraph 17, 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.”

11. It would be manifest from the decisions of the Supreme Court noted above that taking cognizance and summoning an accused in a criminal case is a serious matter, as it has serious consequences on the liberty of an accused. 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 only perfunctory details buttress *ex facie* lack of application of mind.

12. For the reasons noted above, I set aside the impugned order passed by the learned Additional Chief Judicial Magistrate-VII, Muzaffarpur in Mahila P.S. Case No.66 of 2016 and remit the matter to the Court of Magistrate for passing order afresh after taking into consideration all the materials available on record including the police



report submitted under Section 173(2) of the Cr.P.C. I also direct the learned Additional Chief Judicial Magistrate to be cautious in future and refrain from passing orders in formats prepared in advance containing blanks to be filled in with formal details.

13. With the aforesaid observations and directions, the application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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