

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9819 of 2018

Arising Out of PS. Case No.-61 Year-2017 Thana- DHOLBAJJA District- Bhagalpur

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Jai Prakash Yadav S/o Sukhdeo Yadav, R/o Village- Ashram Tola, P.S.-
Naugachia, District- Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh

For the Opposite Party/s : Mr. Sri Akhileshwar Dayal

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 04-09-2018 Heard learned counsel for the petitioner and learned
counsel representing the State.

This application has been filed for setting aside the order dated 02.01.2018 passed in Dholbazza P. S. Case No. 61 of 2017 by Shri D. K. Yadav, Judicial Magistrate Ist Class, Naugachia whereby and whereunder the learned Magistrate took cognizance against the petitioner for the offences punishable under Sections 341, 326, 307/34 of the Indian Penal Code.

It is the contention of the learned counsel representing the petitioner that the order taking cognizance is not indicating the materials on the basis of which the learned Judicial Magistrate Ist Class, Naugachia has taken cognizance and issued summons against the petitioner. Learned counsel submits that merely by saying that the court has perused the case diary



and is satisfied that there are sufficient materials available therein to take cognizance, the order taking cognizance cannot be justified. It is submitted that there are materials available in the case diary which would indicate that no case has been found against this petitioner. Reliance in this regard has also been placed on the judgment of a learned co-ordinate Bench of this Court in the case of **Sudhir Kumar Sinha & Ors. Vs. The State of Bihar & Anr.** reported in **2017 (4) PLJR 1028** and it is submitted that the judgment of the Hon'ble Apex Court in the case of **Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate and Ors.** reported in **(1998) 5 SCC 749** has been relied upon by the learned co-ordinate Bench of this Court to hold and declare that an order taking cognizance passed by filing up the blanks in the printed format cannot be sustained as it does not reflect the application of judicial mind. It is submitted that the present case is also one of those cases in which the order has been passed in mechanical manner.

On the other hand, learned counsel representing the State has opposed the application by submitting inter alia that at this stage the learned Magistrate is not required to discuss the materials which are available in the case diary. It is submitted that a perusal of the impugned order would show that the



learned Magistrate had gone through the materials and having been satisfied with the same has taken cognizance in the present case. It is submitted that at this stage the order of the learned Magistrate need not be interfered with particularly when the same is not the one which was the subject matter of consideration by the learned co-ordinate Bench of this Court in case of **Sudhir Kumar Sinha** (supra). It is submitted that in the said case there was a printed proforma which was used for the purpose of taking cognizance and in the said printed proforma the word 'cognizance' was introduced. It was for that reason the learned co-ordinate Bench had relied upon the judgment of the Hon'ble Apex Court and has taken a view.

Having heard learned counsel for the petitioner and learned counsel representing the State and after going through the order passed by the learned Judicial Magistrate Ist Class, Naugachia, this Court is satisfied that the order taking cognizance cannot be said to be a routine and mechanical kind of order. The learned Magistrate has referred certain pages of the case diary, and has stated that he has gone through the same and on being satisfied he had passed the order taking cognizance. Even otherwise the submission of learned counsel for the petitioner that in course of investigation no material



could be collected against him cannot be examined at this stage.

The petitioner will have liberty to take all such pleas at an appropriate stage.

This application has no merit. It is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J)

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