

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49793 of 2017

Arising Out of PS.Case No. -127 Year- 2016 Thana -GAYA KOTWALI District- GAYA

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1. Jamilur Rahaman @ Md. Jamilur Rahaman,
 2. Hasibur Rahman, Both sons of Late Khalil Rahman,
 3. Nuri Bano, Wife of Hasibur Rahman,
 4. Shabeena Praveen, Wife of Jamilur Rahaman, All resident of Mohalla- Nauranga, P.S.- Mufassil, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Nasima Praveen, D/o Late Jameeruddin, Resident of Mohalla- Chhata Maszid, P.S.- Kotwali, District- Gaya.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sudhir Kumar Sinha, Adv.

For the Opposite Party/s : Mr. Ashok Kumar Singh No.1, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 26-06-2018

Heard learned counsel for the petitioners and learned counsel for the State.

2. By way of filing the present application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.'), the petitioners have prayed for quashing of the order dated 25.10.2016 passed by the learned Chief Judicial Magistrate, Gaya in Gaya Kotwali P.S.Case No. 127 of 2016 by which he has taken cognizance of the offence under Section 498-A of the Indian Penal Code.

3. It has been contended by the learned counsel for the petitioners that the impugned order of cognizance has been passed by the learned Chief Judicial Magistrate by filling up blanks only in pre-written order format. It is further contended that the order has been



passed mechanically without application of judicial mind and, hence, it is fit to be set aside.

4. On the other hand, learned counsel for the State has contended that though the impugned order has been passed on a pre-written format by filling up gaps, it would be evident from perusal of the order impugned that sufficient grounds were available before the learned Magistrate to proceed further against the petitioners under Section 498A of the Indian Penal Code. He contended that merely because the order has been passed on a pre-written format, it cannot be presumed that the learned Magistrate failed to apply his judicial mind.

5. I have heard learned counsel for the parties and carefully perused the impugned order dated 25.10.2016.

6. Without entering into the merits of the allegations, I am of the considered opinion that the order impugned cannot be sustained as it has been passed by filling up blanks on a pre-written format. It is true that an elaborate order is not required to be passed to take cognizance and to issue summons, but the order must disclose that there has been an application of judicial mind. The practice of filling up of blanks in readily typed/written format for passing judicial order has been deprecated by this Court on many occasions. It is unfortunate that despite there being repeated orders in this regard, the learned Chief Judicial Magistrate, Gaya has passed the order in a



mechanical and objectionable manner.

7. It is well settled that summoning of an accused in a criminal case is a serious matter. 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 [(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. An order of cognizance passed in a standardized format by filling up perfunctory details buttress an ex facie lack of application of judicial mind.

9. Keeping in mind the discussions made hereinabove and the ratio laid down by the Supreme Court in *Pepsi Foods Ltd. and Another* (supra), the impugned order dated 25.10.2016 passed by the learned Chief Judicial Magistrate, Gaya is quashed and the matter is remitted back to the Court of Magistrate for passing order afresh after perusing the allegations made in the first information report, the statement of 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. I hope and trust that the learned Chief Judicial Magistrate shall be cautious in future and shall refrain from signing orders on readily typed, written or printed format.

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

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28-06-2018
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