

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22379 of 2018

Arising Out of PS. Case No. -155 Year- 2016 Thana -Amdabad District- Katihar

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Anupam Choubey, S/o Late Braj Kishore Choubey, resident of Flat No. 316, Parag Apartment, New Patliputra Colony, Police Station- Patliputra, District- Patna (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Jitendra Choubey, S/o Late Kamla Kant Choubey, resident of Village- Dillali Diwan, P.S. Amdabad, District- Katihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. N. K. Agrawal, Sr. Advocate
: Mr. Saket Tiwary, Advocate
: Mr. Saket Gupta, Advocate

For the Opposite Party/s : Smt. Reena Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 30-08-2018

Heard learned counsel for the petitioner 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 “Cr.P.C.”), the petitioner has prayed for quashing of the order dated 09.05.2017 passed by the learned Judicial Magistrate, 1st Class, Katihar, in Amdabad P.S. Case No.155 of 2016 by which he has taken cognizance of the offences punishable under Section 341,



323, 448 and 504 read with 34 of the Indian Penal Code.

3. It has been contended by the learned counsel for the petitioner that the impugned order of cognizance has been passed by the learned Magistrate by filling up blanks in the typed format which goes to suggest 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 contended that though the impugned order has been passed on the printed format by filling gaps, there are sufficient materials against the petitioner for taking cognizance of the offence punishable under various provisions of the Indian Penal Code. He contended that an elaborate order is not required to be passed for taking cognizance of the offence. However, he admitted that this Court has repeatedly deprecated the practice of passing judicial order in a standardized format by filling up blanks.

5. I have heard learned counsel for the parties and perused the impugned order dated 09.05.2017.

6. 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.

7. True it is that an elaborate order is not required to be passed for taking cognizance and issuing 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.

8. 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.”

9. It would be pertinent to note that summoning of an accused in a criminal case has serious consequence on the liberty of the accused summoned. Hence, an order of cognizance ought not to be passed in a standardized format by filling up the perfunctory details. Such an order ex facie shows lack of application of mind.

10. Regard being had to the discussions made, hereinabove, and the ratio laid down by the Supreme Court in ***Pepsi Foods Ltd & Anr*** (Supra), the impugned order, dated 09.05.2017, is quashed. The learned Judicial Magistrate, 1st Class, Katihar is directed to pass order afresh after applying his judicial trained mind to 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. The learned Judicial Magistrate is directed to be cautious in future and shall refrain from



signing orders on readily typed or printed format.

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

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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