

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46019 of 2017

Arising Out of PS.Case No. -247 Year- 2015 Thana -FATEHPUR District- GAYA

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1. Ishwari Dayal son of Late Rameshwar Prasad
 2. Urmila Devi wife of Ishwari Prasad,
Resident of village-Bharey, P.S.-Fatehpur, District-Gaya.

.... Petitioner/s

Versus

1. The State of Bihar
2. Arati Verma wife of Shashibhushan Prasad daughter of Sri Shashi Ranjan Prasad, resident of village-Agani, P.S.-Belaganj, District-Gaya.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Sinha, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-06-2018

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

2. By way of the present application preferred 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 20.06.2017 passed by the learned Additional Chief Judicial Magistrate-Xth, Gaya by which he has found a prima facie case to be made out 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 'the D.P.Act') and summoned the petitioners to face trial in connection with Fatehpur P.S. Case No.247 of 2015 corresponding to



Tr. No.3828 of 2016.

3. It has been contended by the learned counsel for the petitioners that the impugned order of cognizance of the offence under Section 498A of the I.P.C. and Sections 3 and 4 of the D.P.Act against the petitioners dated 20.06.2017 passed by the learned Additional Chief Judicial Magistrate-Xth, Gaya in Fatehpur P.S. Case No.247 of 2015 has been passed by filling up blank in printed 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 printed 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 and another namely, Shashi Bhushan Prasad @ Shiv Charan Prasad under Section 498A of the I.P.C. and Sections 3 and 4 of the D.P.Act. He contended that merely because the order has been passed on a printed 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 20.06.2017.

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 blank on a printed 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 format for passing judicial order has been deprecated by this Court on many occasions. It is unfortunate that despite there being repeated orders in the this regard, the learned Additional Chief Judicial Magistrate-Xth, 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 20.06.2017 passed by the learned Additional Chief Judicial Magistrate-Xth, Gaya is quashed.

10. The matter is remitted back to the Court of Magistrate for passing order afresh after perusing the allegation made in the first information report, the statement of witness recorded under Section



161(3) of the Cr.P.C. and the police report submitted under Section 173(2) of the Cr.P.C.

11. I hope and trust that the learned Magistrate shall be cautious in future and shall refrain from signing orders on readily typed or printed format.

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

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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