

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45970 of 2017

Arising Out of PS.Case No. -78 Year- 2016 Thana -THAWE District- GOPALGANJ

- =====
1. Meharun Nesha wife of Ali Murtuza @ Murtuza
 2. Ladlee Khatun @ Noor Shama Razi daughter of Ali Murtuja @ Murtuja Ali
- Both are residents of village - Jagmalwa, P.S.- Thawe, District - Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Shakeel son of Anul Hak, resident of village- Jagmalwa, P.S.-Thawe,
District - Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Dubey, Advocate
: Mr. Rajesh Kumar, Advocate
For the Opposite Party/s : Mr. Ramchandra Singh, 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. This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioners seeking quashing of the order dated 10th March, 2017 passed in Thawe P.S. Case No.78 of 2016 corresponding to Tr. No.1790 of 2017 and G.R. No.1834 of 2016 by which the learned Chief Judicial Magistrate, Gopalganj has taken cognizance of the offences under Sections 307, 324, 323, 341 and 504 read with 34 of the Indian Penal Code and summoned the petitioners along with three others to face trial.



3. It is submitted by the learned counsel for the petitioners that though the petitioners were named in the first information report, in course of investigation the police did not find their culpability of the offence. Accordingly, while submitting the report under Section 173 of the Cr.P.C., the petitioners were not sent up for trial. However, learned Chief Judicial Magistrate vide impugned order dated 10.03.2017 took cognizance of the offences and summoned the petitioners also for trial differing with the police report. He contended that no reason has been assigned in the order impugned by the learned Chief Judicial Magistrate for differing with the police report. His submission is that on 10.03.2017 after receipt of the case diary, the learned Chief Judicial Magistrate first adjourned the matter to 18.05.2017 in order to pass an order on the police report after looking into the case record. However, subsequently on 10.03.2017 itself cognizance of the offences was taken and the accused persons were summoned. He contended that another aspect of the matter is that the subsequent order apparently seems to have been written by someone else and in the concluding portion some space has been left blank which has been filled up by writing the word “संज्ञान”. The contention is that the learned Magistrate has completely failed to apply his judicial mind while passing the order and entire order seems to have been written by a Bench Clerk or someone else and the learned Chief



Judicial Magistrate has simply signed the order writing the order “संज्ञान”.

4. Mr. Ramchandra Singh, learned Additional Public Prosecutor appearing for the State admitted that prima facie it appears that the entire order has been written in different writing and the word “संज्ञान” has been scribed by someone else. However, he submitted that the order passed by the learned Chief Judicial Magistrate is speaking one and it is clearly mentioned in the order that the petitioners were not sent up for trial, but in certain paragraphs of the case diary there is sufficient materials to proceed against all the accused persons.

5. Be that as it may, it is apparent from the order that after receipt of the police report and the case diary on 18.03.2017, the learned Chief Judicial Magistrate first adjourned the matter to 18.05.2017 for placing the police report and case diary along with record and put his signature. No reason has been assigned in the order as to why the learned Chief Judicial Magistrate subsequently on the same day passed an order taking cognizance of the offences and summoning the petitioners also after differing with the police report. Furthermore, it is manifest from perusal of the order that entire writing which has been scribed later on 10.03.2017 is different from the writing made by the learned Chief Judicial Magistrate on receipt



of the case diary. It is also manifest that there is space left blank in the subsequently passed order in which the word “संज्ञान” has been filled up by different writing.

6. The peculiar manner in which the order has been passed clearly goes to suggest that due procedure prescribed in law has not been followed while passing the impugned order. It is well settled position in law that summoning of an accused in a criminal case is a serious matter and it requires judicial application of mind by the Magistrate concerned.

7. In view of the discussions made above, the order impugned cannot be sustained. It is set aside, accordingly.

8. The learned Magistrate concerned shall be required to look into the police report and other materials collected in course of investigation afresh and pass appropriate order in accordance with law.

9. With the aforesaid observations and direction, the application is allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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