

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43366 of 2019

Arising Out of PS. Case No.-65 Year-2017 Thana- KOTHIGRAM District- Gaya

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1. Raj Kumar Singh @ Yougal Singh @ Rajesh Kumar Singh, aged about 42 years, male, Son of Manik Chandra Prasad, Resident of Village - Sevtar, P.S.- Atri, District - Gaya, at present Jhagrataari, P.S.- Hantarganj, District - Chatra (Jharkhand).
 2. Sintu Kumar, aged about 24 years, male, Son of Dhananjay Prasad, Resident of Village - Sagdiha, P.S.- Raushanganj, District - Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The State of Bihar Mines and Minerals.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar, Adv.
Md. Javed Jafar Khan, Adv.
For the Opposite Party/s : Mr. Ram Priya Sharan Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 13-08-2019 The petitioners seek quashing of the order dated 02.08.2018 passed by the learned Sub-Divisional Judicial Magistrate, Sherghati, Gaya in connection with Kothi P.S. Case No. 65 of 2017, whereby cognizance has been taken against them under Sections 413, 414, 379 and 34 of the Indian Penal Code and Sections 06/08 of the Bihar Mineral Illegal Mining Transporting Storage Prevention Rules, 2013 and Sections 04/40 of the Bihar Minor Mineral Concession Rules, 1972



2. The preliminary objection of the petitioners is that the order of cognizance has been passed on a printed format and only the name of the petitioners and the sections under which cognizance has been taken have been filled-up in hand by the learned Sub-Divisional Judicial Magistrate, Sherghati, Gaya.

3. It has been submitted that though a detailed order with respect to cognizance is not required to be made, but the order must reflect an application of mind, which does not appear in a case like this where a printed format has been used and the offences in which cognizance has been taken has been filled-up in handwriting by the Officer concerned.

4. The aforesaid argument of the petitioners presupposes that summons in criminal case is a serious business and should not be mechanical in nature.

5. The dilemma before this Court is that how to treat this order, which is a combination and handwritten of printed materials. The clue can be found in the judgment of this Court in ***Sudhir Kumar Sinha & Ors. Vs. The State***



of Bihar & Anr.; 2017 (4) PLJR 1028, wherein an order of cognizance, similarly couched in a combination of printed format and handwritten material, was held to have been passed without application of mind. In the aforesaid case, the Bench, relying on **Pepsi Foods Ltd. & Anr. Vs. The Special Judicial Magistrate & Ors.; (1998) 5 SCC 749**, held that if there is no application of mind of the Magistrate, the order of summons cannot be sustained.

6. The question for consideration, therefore, is that what would have been the fate of the case if the entire material, which, in the present case, is in a combination of printed format and handwritten material, if only printed material or only handwritten material were part of the order. In that case, whether the expression, viz., "records have been perused" and "there are sufficient materials to take cognizance" under certain offences of the Indian Penal Code and Special Acts would have been sufficient or not.

7. There is some divergence of opinion over this aspect of the matter and the application of mind of a Magistrate at the stage of taking cognizance has been



accepted even in cases where single word has been used by the Magistrate, viz., "seen", "perused" and similar/cognate expressions. Such expressions have been dealt by the Supreme Court and this Court to be an evidence of application of mind. The reason for accepting such laconic expressions also, to be a reflection of an application of mind is that, at the stage of cognizance, no detailed order is required to be recorded and only a *prima facie* view of the matter is required to be taken.

8. However, considering the above facts, suspicion has arisen regarding application of mind of the learned Magistrate and therefore, it would be safer to set-aside such order and remit the case to the learned Magistrate for writing out a fresh order in accordance with law.

9. Consequently, the order dated 02.08.2018 is set-aside.

10. The matter is remitted to the learned Sub-Divisional Judicial Magistrate, Sherghati, Gaya to write out a fresh order in accordance with law within a period of four weeks of the receipt/production of this order.



11. The petition stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

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