

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35223 of 2015**

Arising Out of PS. Case No.-699 Year-2013 Thana- NALANDA COMPLAINT CASE
District- Nalanda

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Ram Anuj Singh Son of Late Patiram Singh. Permanent resident of Village-
Narayanpur, P.S.- Sandesh, District- Bhojpur.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Mohan Bind, son of late Baleshwar Bind, resident of village- Keshopur,
P.S.- Hilsa, District- Nalanda.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Manish Kumar No.13, Advocate
Mr.Rohit Kumar, Advocate
For the Opposite Party/s : Mr.Jharkhandi Upadhayay, APP

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT**

Date : 28-08-2019

Heard learned counsel for the parties.

2. Notice has personally been received by opposite party No.2. Hence, service of notice against opposite party No.2 be treated as valid service.

3. Petitioner was posted as an Assistant Sub-Inspector of Police in the Hila Police Station on 30.07.2013. *Ruby Devi* of village Keshopur filed a written petition addressed to the Officer-in-charge, Hilsa Police Station that on the same day at about 11.30 AM, the named neighbours were digging on the *raasta*, causing inconvenience to *Ruby Devi* and other co-sharers. When *Ruby Devi* asked them not to dig, they started abusing and were



bent upon to commit assault. A copy of the written report of *Ruby Devi* is at *Annexure 2*. The petitioner along with local *Chowkidar* went to inquire about the aforesaid allegation on 31.07.2013 at about 6.30 AM in village Keshopur.

4. The complaint based allegation would reveal that when the petitioner and others had gone to inquire about the aforesaid matter, they asked the complainant to disclose the address of *Shiv Deo Singh* and *Janardan Singh* in abusive language. When the complainant stated that their house is towards the eastern side of the village, the petitioner again abused and asked the complainant to accompany the Police to the house of *Shiv Deo Singh* and *Janardan Singh*. Thereafter, the complainant expressed her inability that she had no cordial relation with *Shiv Deo*, the petitioner committed further abuse and assault.

5. Submission is that the complaint petition has been filed maliciously at the instigation of the opponent of *Ruby Devi* for the reason that the petitioner had recommended for a preventive proceeding under Section 107 of the Code of Criminal Procedure against the parties. Moreover, summoning order dated 06.04.2014 passed in Complaint Case No.699C of 2013 filed against the petitioner, whereunder summons has been issued



against the petitioner to face trial for the offences under Sections 323, 341, 379, 504/34 of the Indian Penal Code has been passed on a printed form without application of judicial mind and even in absence of sanction to prosecute under Section 197 of the Code of Criminal Procedure.

6. Learned counsel for the State submits that sufficient material has come up during inquiry of the complaint petition under Section 202 of the Code of Criminal Procedure and at this stage meticulous appreciation of evidence and trustworthiness of the witnesses cannot be looked into.

7. In *Dharmesh Prasad Verma versus the State of Bihar* reported in *2017 (1) PLJR 401*, a Bench of this Court considered the requirement and need of proper application of mind by the court at the stage of summoning of the accused. The court followed the judgment of the Hon'ble Supreme Court in *Pepsi Foods Ltd. and Another versus Special Judicial Magistrate and Others*, reported in *(1998) 5 SCC 749* and held that an order of cognizance passed in a standardized format by filling up only perfunctory details buttress an ex facie lack of application of mind in the order of taking cognizance and summoning an accused.



8. In this case also, the impugned order has been passed on a printed format after filling up the blank column of date of occurrence and offences under which the complaint petition was filed as well as name of the complainant and offences to face trial whereof summons were issued. Apparently, the impugned order suffers from non-application of judicial mind and the same is not sustainable in law. Moreover, cognizance without prior sanction under Section 197 of the Code of Criminal Procedure, against the petitioner for acts committed while discharging the official duty is not permissible. Hence, the impugned order stands *quashed* and this application stands *allowed*.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
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