

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33820 of 2019

Arising Out of PS. Case No.-237 Year-2016 Thana- LALIT NARAYAN UNIVERSITY
District- Darbhanga

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1. Pawan Kumar Karn @ Pawan Karn @ Ashutosh Dutta @ Ashutosh Kumar Dutta @ Ashutosh Kumar Dutt Son of Late Heera Kant Dutta Resident of Mohalla Denbi Road, P.S.- L.N.M.U. Darbhanga, District- Darbhanga.
 2. Murli Madhav Shankar Son of Late Rama Shankar Prasad Resident of Mohalla-Katabhalbari, P.S.- L.N.M.U. Darbhanga, District- Darbhanga.
 3. Ashok Kumar Mandal @ Ashok mandal Son of Late Ram Lochan Mandal Resident of Mohalla Hasan Chowk, P.S.- Town, District- Darbhanga.
 4. Harish Chandra Jha Son of Late Kailu Jha Resident of Mohalla- Ranipur, P.S.- Sadar, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Manish Kumar Rai Son of Manoj Kumar Rai Resident of Mohalla- Rambag, P.S.- L.N.M.U. Darbhanga, District- Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Lovekush Kumar, Advocate
For the State	:	Mr. Shailendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

2 13-10-2022 Heard learned counsel for the parties.

This is an application for quashing of the order dated 09.02.2018 passed by the learned Chief Judicial Magistrate, Darbhanga in L.N.M.U. P.S. Case No. 237 of 2016 by which he has taken cognizance of the offence under Sections 323, 325, 341, 504 and 34 of the Indian Penal Code and issued summons against the petitioners.



It is the petitioners' case that learned Chief Judicial Magistrate, Darbhanga took cognizance in this case on 09.02.2018 under Sections 323, 325, 541, 504 and 34 of the Indian Penal Code (I.P.C.) against the above named petitioners, where chargesheet has been submitted against the above named petitioner nos. 1 and 2 and final forms u/s 173 of the Cr.P.C. were submitted against petitioner nos. 3 and 4, without assigning any reason.

Learned counsel appearing on behalf of the petitioners, assailing the impugned order, has submitted that the impugned order does not disclose any application of mind, while differing with the report of the police, to the extent that the same relates to the summoning of the petitioners. According to him, the Court below, in a very casual and cavalier manner, has summoned the petitioners through impugned order dated 09.02.2018, though, there was absolutely no material available before them, which could have warranted summoning of the petitioners.

Learned counsel appearing on behalf of the petitioners relied upon the Apex Court decisions in the case of ***Pooja Ravinder Devidasani Vs. State of Maharastra and another reported in (2015) 3 SCC (Cri) 378.*** The relevant paragraph no.



22 of the Apex Court decision in the case of *Pooja Ravinder Devidasani (supra)* is reproduced as under:

“22. As held by this Court in Pepsi Foods Ltd. v. Judicial Magistrate [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. 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 scrutinise



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.”

Relying upon the above decision of the Apex Court, it is submitted that summoning of an accused in a criminal case is a serious matter and since the impugned order of the Magistrate does not reflect his application of mind to the facts of the case and law applicable thereto, this Court should, in the interest of justice, interfere and quash the order impugned, exercising power under Section 482 of the Cr.P.C. It is further submitted that once a police report is submitted under Section 173 of the Cr.P.C., a duty is enjoined upon the Court to scrupulously scrutinize the police report and the accompaniments by applying its judicial mind, either to accept or reject the police report. Learned counsel further submitted that since the learned Magistrate has failed to scrupulously scrutinize the police report, whereby the petitioners were not sent up for trial in the absence of any incriminating material collected during the



course of investigation, on perusal of the impugned order, I find substance in the submission made on behalf of the petitioners.

It is true that the Court below has recorded his perusal of the police report. However, learned Chief Judicial Magistrate has not said anything in his order, as to what materials were there against these petitioners. Though, it is true that the plea, which the petitioners have taken in the present application, could be taken by him by making an application under Section 245 of the Cr.P.C. However, this impugned order, in my opinion, suffers from complete non-application of mind. Accordingly, the same is set aside.

The matter is remanded back to the Court below to pass an order afresh on the police report to the extent that same relates to the summoning of these petitioners.

The application is allowed, accordingly, with the observation as above.

(Chandra Shekhar Jha, J)

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