IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37056 of 2019

Arising Out of PS. Case No.-349 Year-2016 Thana- KOTWALI District- Patna

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Rakesh Kumar Singh @ Rakesh Kumar S/o Late Mahanth Singh Resident of Saguna More, P.S.- Danapur, District- Patna

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Adv.
	:	Mr. Kamla Kant Tiwary, Adv.
	:	Mr. Ajay Kumar Singh, Adv.
For the Opposite Party/s	:	Mr. Jagdhar Prasad, APP.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

4 10-11-2022 Heard learned Sr. Counsel for the petitioner and learned Additional Public Prosecutor for the State.

2. The present Quashing Application has been filed for quashing of order dated 26.04.2019 passed by Special Judge, Excise, Patna in Special Case No.1657 of 2017, Kotwali P.S. Case No. 349 of 2016 by which cognizance has been taken under Sections 47(A), 54/63 of Bihar Excise (Amendment) Act, 2016 against the petitioner alongwith others and it was further directed to issue summons against the present petitioner also.

3. Learned Sr. Counsel for the petitioner directly come to the order of cognizance which is impugned in this case, he submits that the said cognizance order is basically a computerized printed typed proforma on which case number,

date, party name and sections have been inserted by pen. He further submits that the said order dated 26.04.2019 is basically the order taking cognizance. He relied on a judgment passed by this Court in the case of ***Sudhir Kumar Sinha & Ors. Vs. The State of Bihar & Anr.*** *2017 (4) PLJR 1028* in which it has been categorically held in paragraph nos.5, 6 & 8 that order taking cognizance passed by filling up the blanks in the printed format cannot be sustained as it does not reflect the application of judicial mind and has been passed in a mechanical manner.

4. This Court is of the considered opinion that impugned order cannot be sustained as it has been passed without application of judicial mind in a mechanical manner. The learned Judicial Magistrate has simply filled up the blanks in the typed format.

5. The said judgment is relied upon ***Pepsi Foods Ltd. & Anr. vs. Special Judical Magistrate and Ors.*** *(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 scrutinized 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."

6. Hence this Court is of the view that the order dated 26.04.2019 taking cognizance and summoning the accused in a standard format by filling up the perfunctory details buttress and *ex facie* lack of application of mind.

7. Learned counsel for the State submits that this cognizance is good in law.

8. This Court is of the view that in the light of above reasoning the said cognizance order dated 26.04.2019 is bad in law and, therefore, fit to be quashed and hence, the present Quashing Application is allowed and the order dated 26.04.2019 passed by Special Judge, Excise, Patna in Special Case No.1657 of 2017, Kotwali P.S. Case No. 349 of 2016 by which cognizance has been taken under Sections 47(A), 54/63 of Bihar Excise (Amendment) Act, 2016 is hereby quashed.

(Dr. Anshuman, J.)

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