

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14921 of 2023**

Arising Out of PS. Case No.-37 Year-2022 Thana- VAISALI COMPLAINT CASE District-
Vaishali

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1. Varun Berry Son Of Rajendra Kumar Berry R/O Britannia Industries Limited, Prestige Shantiniketan, The Business Precint, Tower C, 16th And 17th Floors, Whitefield Main Road, Mahadevapura Post, Bengaluru- 560048
 2. Prosenjit Roy Son Of Gunendu Kumar Roy R/O 19/1 Naren Sarkar Road, P.S.- Behala, Kolkata- 700008

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Chief Factory Inspector, Bihar
3. Manoj Kumar Chaudhary, Factory Inspector, Vaishali Circle, Hajipur Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ansul, Advocate Mrs. Sagrika, Advocate Mr. Anuj Kumar, Advocate
For the Opposite Party/s :		Mr. Jharkhandi Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER**

3 25-07-2023 Heard learned counsel for the petitioners and learned
APP for the State.

2. This application has been filed for quashing of order dated 05.07.2022 passed by learned Chief Judicial Magistrate, Vaishali at Hajipur in connection with Complaint Case No. C-02-37 of 2022 by which learned Magistrate has taken cognizance against the petitioner for the offence under Section 92 of the Factory Act, 1948.

3. It is alleged that on 26.02.2022 during inspection of M/S Britannia Industries Limited, EPIP Industrial Area, Vaishali



at Hajipur, the factory management did not produce the Register of Annual Leave with wages before the Factory Inspector, Vaishali at Hajipur. On 23.03.2022, in compliance report the said Register was filed but it was not given at the time of inspection. It is further alleged that an Adult Register was also not produced at the time of inspection and has neither been mentioned in the compliance letter dated 23.03.2022 and 26.04.2022 nor it has been submitted.

4. It has been submitted by learned counsel for the petitioners that learned Magistrate did not apply his judicial mind and passed this order mechanically. The impugned order reflects that the same has been passed by filling up name and date in a pre-printed format. Such an order is impermissible in law as it does not show that there has been any judicial application of mind.

5. It has further been submitted that before summoning of accused person in a criminal case has serious consequences on the liberty of an accused, as pursuant to such an order, he is required to take bail and face trial in a criminal case. The order of cognizance in a standardized format by only filling up the perfunctory details buttress an *ex facie* lack of application of mind in the order of taking cognizance and



summoning an accused.

6. Learned counsel for the petitioners has relied upon judgment of Hon'ble Supreme Court in case of ***Pepsi Food Ltd Vs. Special Judicial Magistrate*** reported in ***(1998) 5 SCC 749***. paragraph no. 28 of the aforesaid judgment reads as follows:-

“(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 scrutinize 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.”

7. It has further been submitted that there is no application of mind by the Chief Inspector prior issuing of the purported sanction order. In the absence of a valid sanction



order, entire complaint has been rendered null and void and hence, the impugned order of issuing process is bad in law.

8. Learned counsel for the State has defended the order taking cognizance passed by learned Magistrate.

9. I have heard the submissions of the parties.

10. From perusal of the cognizance order dated 05.07.2022 passed by learned Magistrate it appears that the same has been passed in a printed format. The cognizance order has been passed by learned Magistrate without any application of mind and these kinds of orders have been repeatedly deprecated by this Court.

11. A co-ordinate bench of this Court in case of ***Nokia Siemens Network India Pvt. Ltd & Others Vs. The State of Bihar & Others*** passed in Cr. Misc. No. 34891 of 2013. paragraph no. 7 of the aforesaid judgment reads as follows:-

“7. It is true that an elaborate order is not required to be passed to take cognizance of the offence and issue of summons, the order must at least reflect that there has been application of mind. The manner in which the order has been passed, is shocking. The practice of filling-up of blanks in a pre-prepared printed format for passing judicial orders is highly objectionable. I must record that the Judicial Officers must refrain themselves from signing orders on pre-prepared printed formant without considering materials on record.”

12. In view of the above, this application is



allowed. The impugned order dated 05.07.2022 passed by learned Chief Judicial Magistrate, Vaishali at Hajipur in connection with Complaint Case No. C-02-37 of 2022 is set aside. The matter is remitted back for fresh consideration by the learned Magistrate at the cognizance stage.

13. With the aforesaid observation and direction, this application is disposed of.

(Sandeep Kumar, J)

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