

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.326 of 2020

Arising Out of PS. Case No.-24 Year-2020 Thana- KHAJEKALA District- Patna

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1. Shambhu Saran Sharma, S/o Late Rajdeo Singh Resident of Diwan Mohalla, Pato Ki Bag, P.S.- Khajekalan, Distt- Patna.
 2. Manish Kumar S/o Shri Shambhu Saran Sharma Resident of Diwan Mohalla, Pato Ki Bag, P.S.- Khajekalan, Distt- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Dept., Govt. of Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Station House Officer, Khajekalan Police Station, Patna Town, Distt- Patna.
5. Gauri Shankar Singh, Sub- Inspector, Khajekalan Police Station, Distt- Patna.
6. Surendra Sharma S/o Late Rajdeo Singh Resident of Diwan Mohalla, Pato Ki Bag, P.S.- Khajekalan, Distt- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prem Kumar, Advocate Mr. Uma Shankar, Advocate
For the Res./State	:	Dr. Anant Kumar, APP
For the Res. No.5	:	Mr. Suman Kumar Jha, Advocate
For the Private Res. No.6:	:	Mr. Sanjay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 17-01-2023

1. Heard learned counsel appearing on behalf of the parties.
2. The present application is being preferred under Section 226 and 227 of the Constitution of India for quashing of the impugned order dated 25.02.2022 passed by the learned S.D.J.M., Patna City in Khajekalan PS.



Case No. 24 of 2020 dated 12.01.2022 registered for the offences punishable under Sections 341, 323, 504, 506 and 34 of the Indian Penal Code against abovenamed petitioners.

3. Learned counsel for the petitioners submitted that from bare perusal of FIR, no cognizable offence is made out under the Indian Penal Code, as there is no ingredients of Section 341 of Indian Penal Code is made out, whereas rest alleged offences are appearing non-cognizable in nature. It is further submitted that the issue was summoned vide summoning order dated 25.02.2022 in very mechanical manner and in typed formate, which is sufficient to indicate that cognizance was taken in very mechanical manner.
4. I have heard learned counsel for the parties and perused the impugned order dated 25.02.2022.
5. Learned APP appearing on behalf of the State duly assisted by learned counsel for the respondents submitted that except Section 341 of Indian Penal Code, rest of alleged offences are non-cognizable in nature.
6. Without going into the merits of the allegation, this Court is of the considered opinion that the 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.

7. True it is that an elaborate order is not required to be passed to take cognizance and to issue summons, but the order must at least disclose that there has been an application of judicial mind. The practice of filling up of blanks in readily typed format for passing judicial orders is highly objectionable.

8. The need for proper application of mind by the courts at the stage of summoning has been highlighted by the Supreme Court in **Pepsi Foods Ltd. & Anr. Vs. Special Judicial 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 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.”

9. In view of the above facts and circumstance and the ratio laid down by the Supreme Court in **Pepsi Foods Ltd. & Anr. (Supra)**, this Court is of the opinion that no useful purpose will be served in continuing with the present proceedings. Resultantly, impugned order dated 25.02.2022 passed by S.D.J.M., Patna City in Khajekalan PS. Case No. 24 of 2020 and the proceedings emanating therefrom are hereby quashed. The matter is remitted back to the learned S.D.J.M., Patna City, Patna for passing order afresh after perusing the allegations made in



the FIR, the statements of the witnesses recorded under Section 161(3) of the Cr.P.C. and the police report submitted under Section 173(2) of the Cr.P.C.

- 10. Accordingly, criminal writ petition is allowed, in above terms.
- 11. Pending interlocutory application, if any, also, disposed of accordingly.

(Chandra Shekhar Jha, J)

S.Katyayan/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	25.01.2023
Transmission Date	25.01.2023

