

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17113 of 2023

Arising Out of PS. Case No.-88 Year-2021 Thana- BOCHAHAN District- Muzaffarpur

1. UPENDRA THAKUR, Son of Late Muneshwar Thakur.
 2. Sunita Devi, wife of Upendra Thakur.
 3. Brajesh Kumar Thakur @ Brajesh Thakur, Son of Upendra Thakur.
 4. Priti Devi Daughter of Upendra Thakur Wife of Arbind Mishra @ Karu Mishra.
 5. Pinki Devi Wife of Brajesh Kumar Thakur @ Brajesh Thakur.
 6. Karu Mishra @ Arbind Mishra Son of Baleshwar Mishra.
- All resident of Village - Bakarpur, P.S.- Sadar Hajipur, District –
Vaishali.

... .. Petitioners

Versus

1. The State of Bihar
2. Sindhu Devi Wife of Durgesh Thakur Resident of village - Sarfuddinpur, P.S.- Bochahan, District - Muzaffarpur. At present D/O Sri Sahdev Jha, Resident of Village - Bedwal, P.S.- Sakra, District - Muzaffarpur.

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Ratneshwar Prasad, Advocate
For the Opposite Party/s : Mr. Sunil Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 25-07-2023 Despite service of notice, none appears for the
opposite party no.2.

2. This application has been filed for quashing
of the order dated 18.09.2021 passed by learned Judicial
Magistrate, 1st Class, Muzaffarpur (East), in Bochahan P.S. Case
No. 88 of 2021, by which the learned Magistrate, has taken
cognizance against the petitioners for the offence under Section
498-A of the Indian Penal Code.

3. As per the F.I.R., on 06.04.2021 at about 7:00
A.M. while the informant was brooming in the courtyard, her



husband and other family members came and took her inside the room and sprinkled kerosene oil and tried to set her ablaze. It is also alleged that the accused persons also assaulted the informant.

4. The grievance of the petitioners is that in a case under Section 498-A of the Indian Penal Code the final form was submitted exonerating the petitioners, except the husband of the informant, but the learned Magistrate has differed with the final form and taken cognizance against all the accused persons without application of mind and by a cryptic order.

5. From perusal of the impugned order dated 18.09.2021, it appears that the learned Magistrate has taken cognizance against the petitioners without application of mind as he has not discussed any of the materials, relying upon which, he has differed with the final form and taken cognizance against the petitioners. The impugned order of the learned Magistrate appears to be a cryptic order.

6. The Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. & Another vs. Special Judicial Magistrate & Others*** reported in ***(1998) 5 SCC 749*** has held in paragraph no.28 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.”



7. Considering the facts of this case and also considering the law laid down in the case of *Pepsi Foods Ltd. & Another vs. Special Judicial Magistrate & Others (supra)*, this application is allowed. Accordingly, the impugned order dated 18.09.2021 passed by learned Judicial Magistrate, 1st Class, Muzaffarpur (East), in Bochahan P.S. Case No.88 of 2021 is set aside with respect to present petitioners only. However, the case will proceed against the rest accused i.e. husband of the informant namely, Durgesh Thakur.

(Sandeep Kumar, J)

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