

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29189 of 2021

Arising Out of PS. Case No.-41 Year-2018 Thana- VIJAYEPUR District- Gopalganj

1. GAYA TIWARI @ GAYA PRASAD TIWARI Son of Late Trigunanand Tiwari Resident of Village - Babhnauli, P.O. - Chitauna, P.S. - Vijayipur, District - Gopalganj, Bihar.
2. Krishan Mohan Tiwari @ Kishan Tiwari Son of Gopeshwar Tiwari Resident of Village - Babhnauli, P.O. - Chitauna, P.S. - Vijayipur, District - Gopalganj, Bihar.
3. Abhishek Tiwari @ Vishal Tiwari Son of Gopeshwar Tiwari Resident of Village - Babhnauli, P.O. - Chitauna, P.S. - Vijayipur, District - Gopalganj, Bihar.
4. Aditya Tiwari Son of Dhaneshwar Tiwari Resident of Village - Babhnauli, P.O. - Chitauna, P.S. - Vijayipur, District - Gopalganj, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dilip Kumar Tiwari Son of Vyasmani Tiwari Resident of village - Babhnauli, P.S. - Vijayipur, Distt. - Gopalganj

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Prince Kumar Mishra
For the Opposite Party/s : Mr.Sunil Kumar Pandey

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 20-07-2023 Heard learned counsel for the parties.

2. This application has been filed for quashing the order dated 29/07/2019 passed in Vijayipur P.S. Case No. 41/2018 by which learned Additional Chief Judicial Magistrate-IV, Gopalganj has been pleased to take cognizance 'by filling up blank in typed format' under Section 341, 323, 324, 307, 504/34 of the Indian Penal Code, 1860 without considering the facts that the Investigating Officer after detailed investigation has



found no evidence against these petitioners and has accordingly filed closure report. However, learned court below has differed with closure report and has been pleased to take cognizance and issued summons to the petitioners.

3. The sole argument of the learned counsel for the petitioners for the present case is that the impugned order taking cognizance is bad-in-law as it has been passed by filling up the blanks by the Presiding Officer and he submits that there has been no application of mind in the present case and this kind of cognizance order is illegal in view of the law laid down by the Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. And another vs. Special Judicial Magistrate and others (1998) SCC 749.***

4. Learned counsel for the opposite party no. 2 has submitted that the trial has proceeded and therefore this application has become infructuous.

5. I have considered the submissions of the parties, the impugned order dated 29/07/2019 is bad in view of the law laid down in the case of ***Pepsi Foods Ltd. And another (supra)*** as the same has been passed mechanically.

6. So far as the objection of learned counsel for the opposite party no. 2 is concerned, the same is fit to be rejected



in view of the law laid down by Hon'ble Supreme Court in the case of Anand Kumar Mohatta vs. State (NCT of Delhi) (2019) 11 SCC 706, this application is allowed.

7. The order dated 29/07/2019 passed in Vijayipur P.S. Case No. 41/8 by which cognizance has been taken against the petitioners are hereby quashed.

8. The matter is remitted back for fresh consideration at the stage of cognizance.

(Sandeep Kumar, J)

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