

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25965 of 2023

Arising Out of PS. Case No.-155 Year-2012 Thana- GOVERNMENT OFFICIAL COMP.
District- Gaya

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SRI VIRENDRA PRASAD SINGH S/o Late Bijli Prasad Singh R/o - 138,
P.C. Colony, Kankarbagh, PS-Kankarbagh, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar PATNA
2. Sri R.K. Srivastava, Labour Enforcement Officer (Central), Gaya Gaya

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad, Advocate Mr. OM Prakash Kumar, Advocate
For the O.P. No.2	:	Mr. Manoj Kr. Sinha, C.G.C.
For the State	:	Mr. Raj Ballabh Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 09-05-2023 Heard learned counsel for the parties.

At the very outset, the learned counsel for the petitioner has submitted that the cognizance has been taken on a typed copy of the order and there is no application of mind and this application is fit to be allowed in view of the law laid down by the Hon'ble Supreme Court in the case of *Pepsi Foods Ltd. and Anr. vs. Special Judicial Magistrate and Ors. (1998) 5 SCC 749* and the order dated 31.08.2018 passed in Cr. Misc. No.10167 of 2018.

Learned counsel for the Union of India and the State have tried to support the order of the Magistrate but they have not been able to meet the argument of the learned counsel



for the petitioner in view of the law laid down by the Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. and Anr. vs. Special Judicial Magistrate and Ors. (supra)***.

Paragraph 28 of the judgment of the Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. and Anr. vs. Special Judicial Magistrate and Ors. (supra)*** reads as follows.

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 scrutinise 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.

No order can be passed by the Magistrate taking cognizance in a typed copy in standardize format by filling up details which shows non-application of mind.

Considering the law laid down by the Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. and Anr. vs. Special***



Judicial Magistrate and Ors. (supra), this application is allowed.

The order dated 09.11.2012 is set aside and the matter is remitted back to the Magistrate for fresh consideration in accordance with the law laid down by the Hon'ble Supreme Court of India.

The Chief Judicial Magistrate, Gaya and other Chief Judicial Magistrates who are taking cognizance on printed formats are henceforth directed not to take cognizance on printed format.

The Registrar General is directed to issue guidelines with regard to the same to all cognizance taking course so that this kind of illegality is not perpetuated. Along with the guidelines, the Registrar General will also transmit the order dated 31.08.2018 passed in Cr. Misc. No.10167 of 2018 to all the Magistrates.

(Sandeep Kumar, J)

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