

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51491 of 2018

Arising Out of PS. Case No.-794 Year-2012 Thana- Bettiah City District- West Champaran

Praduman Kumar Prasad @ Pradhuman Kumar Prasad, Son of Late Krishna Deo Prasad, resident of Village- Mohammadpur, P.S.- Patahi, District- East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shashank Chandra, Advocate
		Ms. Smriti Verma, Advocate
		Mr. Nitish Kumar, Advocate
For the Opposite Party/s:		Smt. Meena Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 2 10-07-2024 1. The petitioner has filed the instant Miscellaneous Case under Section 482 of the Code of Criminal Procedure, praying for quashing of the proceedings in connection with Tr. No. 1454 of 2017, arising out of Bettiah Town P. S. Case No. 794 of 2012, dated 2nd of November, 2012, presently pending before the learned Judicial Magistrate, 1st Class, Bettiah, West Champaran. The learned Chief Judicial Magistrate, Bettiah, West Champaran by order dated 4th of May, 2015 took cognizance of offence against the petitioner under Sections 420, 467, 468, 471 and 408 of the Indian Penal Code.
2. It is alleged by the petitioner that without appreciating the fact that no offence under the aforesaid penal provisions was



made out against him as a result of dishonour of cheque, as the said alleged cheque was issued by the informant himself in favour of the petitioner and the amount withdrawn was spent to meet the office expenses in terms of the direction of the superior authority of the petitioner, the Chief Judicial Magistrate, Bettiah, West Champaran has taken cognizance against him.

3. It is pertinent to mention that after taking cognizance, the learned Chief Judicial Magistrate, Bettiah, West Champaran transferred the case for trial and disposal to the Court of learned Judicial Magistrate, 1st Class, Bettiah, West Champaran.

4. Before describing the issue involved in the instant Miscellaneous Case, this Court finds it necessary to state the following facts: -

The informant issued a bearer cheque in the name of the petitioner in order to withdraw Rs. 12,000/- on 21st of September, 2010 from the Punjab National Bank. The petitioner manipulated the amount of the said cheque by writing of “2” in front of 12,000/-, making the said cheque of Rs. 2,12,000/- and withdrew the entire money from the Bank. The informant, being the District Welfare Officer, lodged an F.I.R. against the petitioner and police took up the case for investigation. After completion of investigation, police submitted charge-sheet



against the petitioner, on the basis of which the learned Chief Judicial Magistrate took cognizance of offence under Sections 420, 467, 468, 471 and 408 of the Indian Penal Code by order dated 4th of May, 2015.

5. It is submitted by the learned Advocate for the petitioner that the order of cognizance passed by the learned Chief Judicial Magistrate, Bettiah, West Champaran on 4th of May, 2015 was not passed in accordance with law. Firstly, the cognizance was taken without assigning any reason on the printed format which is not sustainable.

6. In *Abdul Rasheed v. State of U.P.*, reported in (2010) 3 JIC 761 (Allahabad), it is held by the Allahabad High Court that the Judicial Officers cannot be allowed to pass order in a mechanical manner either by filling in blank portions on a printed format or by affixing ready-made seal etc. of the order on a plain paper. Such tendency must be deprecated and cannot be allowed to perpetuate. This reflects not only lack of application of mind to the facts of the case but is also against the settled judicial norms. Therefore, this practice must be stopped forthwith.

7. The same decision has been reiterated in a subsequent case, viz., *Satya Pal v. State of U.P. through Principal*



Secretary, Home, Lucknow & Anr. (Application under Section 482, No. 2083 of 2023) decided on 1st of March, 2023.

8. This issue came up before this Court for consideration in Cr. Miscellaneous No. 40702 of 2015, ***Dharmesh Prasad Verma v. The State of Bihar***, reported in ***2017(1)PLJR401***. In paragraph 25 of the aforesaid judgement, this Court found proforma order passed by the learned Sub-Divisional Judicial Magistrate, Gaya, dated 14th of July, 2015. The Hon'ble Judge quoted the relevant portion of the order in his solemn judgement. Thereafter, in paragraph no. 27 to 30, the Hon'ble Judge discussed in detail and came to the finding that the order of cognizance passed by the learned Magistrate in a printed proforma shows absence of application of mind. The relevant paragraph nos. 27 to 30 is quoted below.

“27. 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. and Another Vs. Special Judicial Magistrate and Others, reported in (1998) 5 SCC 749, in para 28 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.”

28. *It would be trite to remark that taking of cognizance and summoning of accused in a criminal case has serious consequence on the liberty of an accused, as pursuant to such order, he is made to take bail and face trial for a criminal offence. An order of cognizance passed in a standardized format by filling up the only perfunctory details buttress an ex facie lack of application of mind in the order of taking cognizance and*



summoning an accused.

29. In Fakhruddin Ahmad Vs. State of Uttaranchal and Another, reported in (2008) 17 SCC 157, once again, in paragraph 17, the Supreme Court has held as follows:-

“17. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender.”

30. Keeping in mind the discussions made, hereinabove and the ratio laid down by the Supreme Court in Pepsi Foods Ltd. and Another (supra) and Fakhruddin Ahmad (supra), this Court deems it fit and proper to direct that in future Judicial Officers shall refrain from passing orders in formats prepared in advance containing blanks to be filled in with



formal details, as has been done in the present case. The Judicial Officers are further directed to pass orders of taking cognizance and summoning accused in a criminal case only after applying their judicial mind to the facts of the case and the law applicable thereto.”

9. Recently, in the case of ***Bishnu Kumar Sureka & Ors. v. State of Bihar & Anr.***, reported in ***2023(5)BLJ643***, a Co-ordinate Bench of this Court quashed the order of cognizance on the similar ground that the order was not passed on application of mind and it was mechanically passed by filling in a printed proforma.

10. The learned Chief Judicial Magistrate, Bettiah, West Champaran in his order of cognizance, dated 4th of May, 2015 has committed the same error, which cannot be rectified.

11. For the reasons stated above, this Court has no other alternative but to hold that the order of cognizance is bad in law and liable to be set aside.

12. Accordingly, the order, dated 4th of May, 2015, passed by the Chief Judicial Magistrate, Bettiah, West Champaran is set aside.

13. As the order of cognizance in Tr. No. 1454 of 2017, arising out of Bettiah Town P. S. Case No. 794 of 2012, dated 2nd of November, 2012 is set aside, the criminal case against the



petitioner is also quashed.

14. The instant application under Section 482 of the Code of Criminal Procedure is accordingly allowed.

15. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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