

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35039 of 2021

Arising Out of PS. Case No.-15 Year-2015 Thana- SAMSTIPUR RPF/POST District-
Samastipur

=====

Sushil Kumar Srivastava, Son Of Chandrashekhar Prasad, Resident Of Ward
No.-36, Rajabazar, P.S. Motihari Town, District- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. East Central Railway Through The General Manager, Hazipur, Bihar
3. The Divisional Rail Manager, East Central Railway, Samastipur, Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Vikash Kumar Pankaj, Advocate
		Mr. Rishav Dev, Advocate
For the Union of India	:	Ms. Poonam Kumari Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 27-09-2024

Heard Mr. Vikash Kumar Pankaj, learned Advocate
for the petitioner and Ms. Poonam Kumari Singh, learned
Advocate for the Union of India.

2. The petitioner has invoked the inherent jurisdiction
of this Court by filing the present quashing application under
Section 482 of the Code of Criminal Procedure; 1973 assailing
the impugned order dated 13.03.2019 passed by the learned
Additional Chief Judicial Magistrate, Railway, Samastipur in
RPF(SMI) P.S. Case No. 15 of 2015 (CR No. 499 of 2015),
whereby the learned Court has taken cognizance of the offences
punishable under Section 143 of the Railways Act, 1989 against



the petitioner and others.

3. The brief facts giving rise to the present quashing application are that on 16.05.2015 the Central Intelligence Bureau (CIB) on a confidential information, keeping vigil over the Tatkhal Railway Ticket Booking Counter. Suspecting some foul they entered in the booking cabin of the petitioner, where Station Superintendent, Station Master and others were present. In course of search, the CIB team recovered two tatkal tickets inside the counter but on calculating the cash, found that Rs. 5,870/- was deficient as per cash summary. The petitioner being dealing clerk stated that the money of two tickets are unpaid by the Station Superintendent and Station Master. Even on taking the sums of both the tickets and deducting it from deficient amount, Rs. 350 was still found deficient for which no reasonable explanation was given by the petitioner. Accordingly the seizure list was prepared and both the tickets and an amount of Rs. 2,500/- was seized.

4. On the basis of the afore-noted written report, the investigation continued, through the Railway Protection Force, Darbhanga and consequently chargesheet has been submitted on 29.10.2018 before the learned Court below. The matter was placed before the learned jurisdictional Court; and vide order dated 13.03.2019, the impugned order taking cognizance has



been passed for the offences afore-noted.

5. Learned Advocate for the petitioner drawing the attention of the impugned order taking cognizance, primarily contended that apart from the order being non-speaking, *prima facie* it appears that the learned jurisdictional Court has not applied his judicial mind, in as much as, a place which was kept blank in the order has been filled up with the word 'sangyan' and the order impugned appears to be written by the office clerk.

6. Learned Advocate for the petitioner further drew the attention of this Court to Section 143 of the Railways Act, 1989 and vigorously contended that from the reading of the section it clearly appears that the subject penal provision is not attracted against any railway employees, as it is categorically stated that - "If any person, not being a railway servant or an agent authorized in this behalf,—(a) carries on the business of procuring and supplying tickets for travel on a railway or for reserved accommodation for journey in a train; or (b) purchases or sells or attempts to purchase or sell tickets with a view to carrying on any such business either by himself or by any other person".

7. The petitioner being dealing clerk in the submission of the learned Advocate for the petitioner, the penal provision as



provided under Section 143 is not attracted.

8. It is further contended that admittedly the entire investigation was conducted and charge-sheet has been submitted by the investigating officer of the Railway Protection Force, Darbhanga; nevertheless, the officer of the Railway Protection Force is not authorized to investigate and submit charge-sheet, and thus on the basis of which, if any proceeding is initiated, that is non-est and having no sanction of law.

9. To support the aforesaid contention reliance has been placed on a judgment passed by the Hon'ble Apex Court in the case of ***Balkishan A. Devidayal vs. State of Maharashtra (Manu/SC/ 0112/1981)***. The learned Advocate for the petitioner has taken this Court to paragraph no. 38, 39, 52 and 57 of the said judgment in order to fortify his contention.

10. On the other hand, learned Advocate for the Union of India countering the afore-noted submission vigorously contended that during the raid, the cabin of the petitioner was searched and where two unauthorized tickets have been found and when the counter box was checked, Rs. 5,870/- was found deficient as per cash summary of the counter. The petitioner also admitted his complicity before the CIB.

11. It is next contended that Railway Protection Force being empowered under the law conducted the investigation and



after due investigation filed charge-sheet on 29.09.2018 against all the three accused persons including the petitioner, under Section 143 of the Railways Act, 1989. It has also been said that the order of cognizance is always of the offence and not the offender and the point raised before this Court can be raised at the time of framing of the charge.

12. It is also the contention of learned Advocate for the Union of India that under Section 179 and 180 of the Railways Act deals with the provisions for arrest for offences and enquiry by officer authorized to ascertain commission of offence under Section 180A, B, C, D, E, F, G which clearly deals with inquiry and follow up action by the authorized person. In the case in hand, the RPF is the authorized authority to conduct the case by filing complaint thereafter follow the case till the conviction or acquittal of the accused persons.

13. Having heard the rival contention of the parties and taking note of the submission advanced, this Court finds substance in the submission of learned Advocate for the petitioner. Firstly, the order taking cognizance *prima facie* reflects that the learned jurisdictional Court has not applied his judicial mind to the materials placed before him and he has only put the word 'sangyan' in a blank place of the order. The impugned order speaks that the learned Court perused the complaint as



well as other documents and *prima facie* found that case under Section 143 is made out against all the accused persons. There is lack of any discussion that as to what are the materials which compel the Court to take cognizance for the offence under Section 143 of the Railways Act, 1989.

14. It is ruled in catena of decisions that the learned Magistrate cannot be allowed to pass an order in a mechanical way, either by filing a blank portions on a printed format or by affixing ready made seal, etc of the order on a plain paper, such practice has been deprecated with a caution to stop forthwith. This issue was also considered by this Court in ***Dharmesh Prasad Verma vs. The State of Bihar, 2017 (1) PLJR 401***. The Court while holding such order of cognizance passed by the learned Magistrate in a printed performa shows an ex facie lack of application of mind observed as follows:

“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. v. Special Judicial Magistrate, 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 v. State of Uttaranchal, 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. (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.”

15. Recently, the learned co-ordinate Bench of this Court, dealing with an identical issue in the case of ***Praduman Kumar Prasad vs. The State of Bihar & Ors. [Cr. Misc. No. 51491 of 2018]*** vide its order dated 10.07.2024, while setting aside the order taking cognizance, reiterated the decisions noted hereinabove and held such order without application of mind.

16. So far Section 143 of the Railways Act, 1983 is concerned, this Court is of the opinion that the petitioner being a dealing clerk and thus, a railway employee, shall not be governed by the aforesaid Section as it clearly says that if any persons not being a railway servant or an agent authorized in this behalf involved in illegal activities of unauthorisedly carrying on of business of procuring and supplying of railway tickets. In the case in hand the petitioner is admittedly a railway employee and the expression business implies continuity.



Irrespective of the fact, the cognizance is of offence and not against the offender; since the order taking cognizance is only confined to an offence punishable under Section 143 of the Railways Act, 1989, this Court is of the view that the subject provision is not applicable to the petitioner.

17. So far, the judgment as cited by the learned Advocate for the petitioner is concerned, it also governs the issue and it would be apt to quote certain portion of paragraph no. 38, 39 and paragraph no. 57 which would suffice to deal :-

“38. An officer of the RPF making an inquiry under the 1966 Act, cannot by any stretch of imagination, be called an "officer-in-charge of a Police Station" within the meaning of Sections 173 and 190(b) of the Code. The mode of initiating prosecution by submitting a report under Section 173 read with Clause (b) of Section 190 of the Code is, therefore, not available to an officer of the RPF who has completed an inquiry into an offence under the 1966 Act. The only mode of initiating prosecution of the person against whom he has successfully completed the inquiry, available to an officer of the RPF, is by making a complaint under Section 190(1)(a) of the Code to the Magistrate empowered to try the offence. That an officer of the Force conducting an inquiry under Section 8(1) cannot initiate proceedings in court by a



report under Sections 173/190(1)(b) of the Code, is also evident from the provisos to Sub-section (2) of Section 8 of the 1966 Act.

39. From the comparative study of the relevant provisions of the 1966 Act and the Code, it is abundantly clear that an officer of the RPF making an inquiry under Section 8(1) of the 1966 Act does not possess several important attributes of an officer-in-charge of a police station conducting an investigation under Chapter XIV of the Code. The character of the 'inquiry' is different from that of an 'investigation' under the Code. The official status and powers of an officer of the Force in the matter of inquiry under the 1966 Act differ in material aspects from those of a police officer conducting an investigation under the Code.

57. In the light of the above discussion, it is clear that an officer of the RPF conducting an enquiry under Section 8(1) of the 1966 Act has not been invested with all the powers of an officer-in-charge of a police station making an investigation under Chapter XIV of the Code. Particularly, he has no power to initiate prosecution by filing a charge-sheet before the Magistrate concerned under Section 173 of the Code, which has been held to be the clinching attribute of an investigating 'police officer'."

18. In view of the aforesaid facts, circumstances and the position obtaining in law, this Court is of the opinion that for



all the counts, discussed hereinabove, the impugned order taking cognizance dated 13.09.2019 as also the proceeding arising out of RPF(SMI)P.S. Case No. 15 of 2015 (CR No. 499 of 2015) is an abuse of the process of the Court and, as such, fit to be quashed.

19. The quashing application stands allowed.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
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