

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2954 of 2022

Arising Out of PS. Case No.-574 Year-2017 Thana- NAGAR District- Vaishali

BAIDYANATH RAJAK Son of Late Damodar Baitha Resident of Mohalla -
I.T.I. Road, Hathsarganj, in front of O.P. Statue of DamodarBaitha, Police
Station- Hajipur Sadar, District - Vaishali.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Sri Ram Rajya Sharma, Deputy Superintendent of Police, Special Vizilance
Unit, Patna Camp Hathsar, ITI Road, Near Durga Asthan, Hajipur, Vaishali.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Avinash Kumar
For the State	:	Mr. Dilip Kumar No. 1
For the S.V.U.	:	Mr. Rana Vikram Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 27-03-2025 Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the S.V.U.

2. Counter affidavit has been filed by learned APP has
taken on record.

3. The present application has been filed for quashing
the order dated 22.10.2019 by which learned Magistrate has
taken cognizance against the petitioner in Trial No. 525/2019,
G.R. No. 3610/2017, arising out of Town P.S. Case No.
574/2017 for the offence u/s 188 of the Indian Penal Code.

4. The prosecution case in brief is that during the
search of house of the petitioner in connection with the SVU,
Patna P.S. Case No. 03/2017 dated 17.08.2017, two notes of Rs.



1000/- denomination and 20 notes of Rs. 500 denominations issued by the Reserve Bank of India were found which are not in use and thus FIR was registered against the petitioner.

5. Learned counsel for the petitioner submits that altogether 22 old notes have been recovered from the petitioner who is a retired Government Servant. He further submits that no FIR is maintainable in view of allegation levelled against the petitioner and a complaint case is maintainable. He also relies upon Annexure 3 which is Gazette notification dated 30th December, 2016 (Ministry of Law and Justice) of Clause 5 which reads as follows:

“5. On and from the appointed day, no person shall, knowingly or voluntarily, hold, transfer or receive any specified bank note:

Provided that nothing contained in this section shall prohibit the holding of specified bank notes-

(a) by any person

(i) up to the expiry of the grace period, or

(ii) after the expiry of the grace period,

(A) not more than ten notes in total, irrespective of the denomination; or

(B) not more than twenty-five notes for the purposes of study, research or



numismatics;

(b) by the Reserve Bank or its agencies, or any other person authorised by the Reserve Bank;

(c) by any person on the direction of a court in relation to any case pending in that court.”

6. Learned counsel further submits that for the recovery, the SVU should inform the RBI and not lodge the F.I.R.

7. Learned counsel for the SVU and learned APP for the State has opposed the application and submitted that the petitioner has to pay the penalty for being in possession of such notes with him as per notification.

8. I have considered the submission of the learned counsel for the parties. No notice has been issued to the petitioner by the RBI or any Central Agency for possession of the 22 notes.

9. The impugned order dated 22.10.2019 is a cryptic and non-speaking order and suffer from non-application of mind and is in the teeth of law laid down by Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749*** and ***Delhi Race Club (1940) Ltd. v. State of U.P., (2024) 10 SCC 690***. This application is allowed.



10. The order dated 22.10.2019 by which learned Magistrate has taken cognizance against the petitioner in Trial No. 525/2019, G.R. No. 3610/2017, arising out of Town P.S. Case No. 574/2017 is hereby quashed.

(Sandeep Kumar, J)

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