

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5601 of 2019

Arising Out of PS. Case No.-265 Year-2011 Thana- BISFI District- Madhubani

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1. Bhupesh Paswan @ Bhupesh Kumar Paswan and Ors. S/o Jibachh Paswan resident of village-Dudhail,
 2. Rupesh Paswan @ Rupesh Kumar Paswan S/o Jibachh Paswan resident of village-Dudhail,
 3. Jibachh Paswan S/o Late Sone Paswan resident of village-Dudhail,
 4. Ramashish Paswan S/o Late Sone Paswan resident of village-Dudhail,
 5. Bina Devi W/o Jibachh Paswan resident of village-Dudhail,
 6. Sudisha Devi @ Sudakshna Devi W/o Ram Ashish Paswan resident of village-Dudhail

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dukhni Devi W/o Raj Kumar Paswan resident of village-Dudhail,

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sunil Kumar Karn
For the Opposite Party/s : Mr. Meena Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 18-03-2025 This matter has been heard yesterday and the same was
adjourned for today.

2. Heard learned counsel for the petitioners and learned
counsel appearing on behalf of the opposite party No. 2 as well
as learned Additional Public Prosecutor for the State.

3. The present application has been filed for quashing the
order dated 30.11.2018 passed in Criminal Revision
No.1041/2017, 1157/2017 by the Sessions Judge, Madhubani
whereby and whereunder revision against the order of



cognizance dated 01.06.2017 has been dismissed and order taking cognizance was affirmed. Further to quash the order of cognizance dated 01.06.2017 passed by the A.C.J.M., Benipatti in Bisfi P.S. Case No. 265 of 2011 dated 15.10.2011 for the offence under Sections 341, 323, 354, 504, 379/34 of Indian Penal Code.

4. By the order dated 01.06.2017, the magistrate has taken cognizance of the offences after the matter having been remanded by the revisional court and by a non-speaking and cryptic order has taken cognizance under Sections 341, 323, 354, 504, 379/34 of Indian Penal Code.

5. Thus, this order was assailed by the petitioners in revision and the revision has also been dismissed vide order dated 30.11.2018 in Criminal Revision No. 1041/2017, 1157/2017 by the Sessions Judge, Madhubani.

6. The Hon'ble Supreme Court in the case of **Pepsi Foods Ltd. v. Special Judicial Magistrate reported in (1998) 5 SCC 749**, has held 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 on 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.”

7. The Hon’ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. v. State of U.P.*** reported in **(2024) 10 SCC 690** has held as under:

“30. The aforesaid aspect could be said to have been completely lost sight of by the High Court, while rejecting the application filed by the appellant herein under Section 482CrPC, seeking quashing of the summoning order.

31. In Mehmoood Ul Rehman v. Khazir Mohammad Tunda [Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420 : (2016) 1 SCC (Cri) 124] , this Court held thus : (SCC p. 430, para 22)

“22. ... The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. ... In other words, the Magistrate is not to act as a post office in taking cognizance of each and every



complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. ... To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.” (emphasis supplied)

32. The principle of law discernible from the aforesaid decision is that issuance of summons is a serious matter and, therefore, should not be done mechanically and it should be done only upon satisfaction on the ground for proceeding further in the matter against a person concerned based on the materials collected during the inquiry.

8. In view of the above and in view of the law laid down by the Hon'ble Supreme Court in the ***Pepsi Foods Ltd. v. Special Judicial Magistrate*** (*supra*) and also in the case of ***Delhi Race Club (1940) Ltd. v. State of U.P.*** (*supra*), this



application is allowed.

9. The order dated 30.11.2018 passed in Criminal Revision No.1041/2017, 1157/2017 by the Sessions Judge, Madhubani and the dated 01.06.2017 passed by the A.C.J.M., Benipatti in Bisfi P.S. Case No. 265 of 2011 are hereby quashed.

(Sandeep Kumar, J)

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