

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.551 of 2020

Arising Out of PS. Case No.-62 Year-2019 Thana- PARASBIGHA District- Jehanabad

1. Ramanuj Sharma Son of Late Jang Bahadur Sharma Resident of Village - Godiha, P.S.- Parasbigha in the district of Jehanabad
2. Sonu Kumar @ Sonu Sharma Son of Brij Sharma Resident of Village - Godiha, P.S.- Parasbigha in the district of Jehanabad
3. Rajesh Sharma Son of Parshuram Sharma Resident of Village - Godiha, P.S.- Parasbigha in the district of Jehanabad
4. Pappu Sharma Son of Kameshwar Sharma Resident of Village - Godiha, P.S.- Parasbigha in the district of Jehanabad
5. Brij Sharma @ Braj Kishore Sharma@ Braji Sharma Son of Jang Bahadur Sharma Resident of Village - Godiha, P.S.- Parasbigha in the district of Jehanabad
6. Golu Kumar Son of Madheshwar Sharma Resident of Village - Godiha, P.S.- Parasbigha in the district of Jehanabad
7. Rakesh Yadav @ Rakesh Kumar Yadav Son of Ramanand Yadav @ Ramanand Sharma Resident of Village - Godiha, P.S.- Parasbigha in the district of Jehanabad
8. Bikeshi Yadav @ Bikeshi Kumar @ Vikash Kumar Son of Ramanand Yadav Resident of Village - Godiha, P.S.- Parasbigha in the district of Jehanabad
9. Bharat Yadav Son of Banshi Yadav Resident of Village - Godiha, P.S.- Parasbigha in the district of Jehanabad

... .. Appellant/s

Versus

1. The State of Bihar
2. Arvind Kumar S/o Devlal Das R/o- Godiha, P.S. Parasbigha, District- Jehanabad.

... .. Respondent/opposite parties

Appearance :

For the Appellant/s : Mr.Sunil Kumar, Advocate
For the State : Ms.Usha Kumari 1, Special P.P.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 17-03-2025 Heard learned counsel for the appellants and learned



Special P.P. for the State.

2. None appears for the opposite party no. 2 despite valid service of notice.

3. The present appeal has been filed for quashing the order dated 16.12.2019 passed in Special SC/ST Case No. 54 of 2019 arising out of Parasbigha P.S. Case No. 62 of 2019 by the learned 1st Additional District & Sessions Judge, Jehanabad by which cognizance was taken against the appellant for the offence punishable under sections 147, 149, 323, 504 506 IPC and under Section 3(1) (r)(s) (w) 3(2)(va) of SC/ST (POA) Act.

4. As per the prosecution case, on 21.03.2019 the informant namely Arvind Kumar submitted a written application addressed to the SHO Parasbigha P.S. alleging therein *inter alia* that on 21.03.2019 at about 4 P.M. due to dispute regarding drainage, accused persons named in the FIR including the appellants armed with Lathi, Khanti, bricks etc came at the house of the informant and tried to take away his brother namely Dharmendra Kumar and when he resisted then the accused Rajeshwar Sharma is alleged to have started to assault by *Lathi*. In the meantime the mother of the informant namely Usha Devi, sister Laungiya Devi, nephew Dhiraj Das, Subodh Das, aunt Kanti Devi, Uncle Raja Ram Das came to rescue his



brother, then all accused persons including the appellants are alleged to have assaulted them by Lathi, Khanti and also by brick batting as a result of which all of them became injured and on hulla the villagers started to come there then accused persons are said to have been fled away.

5. The order dated 16.12.2019 has been challenged by the appellants. The police after investigation did not find the case true against the appellants and submitted final form and against the other co-accused, the police has submitted chargesheet. The Magistrate has taken cognizance against all the accused persons by the impugned order.

6. The impugned order is a cryptic and non-speaking order. The Magistrate has not discussed the merits of the case with regard to the appellants who were exonerated. The impugned order of the Magistrate taking cognizance is in teeth of the law laid down by the Hon'ble Supreme Court in the case of **Pepsi Foods Ltd. v. Special Judicial Magistrate** reported in **(1998) 5 SCC 749**, which has been 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 Mehmood 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 appeal is allowed.

9. The order dated 16.12.2019 passed in Special SC /ST Case No. 54 of 2019 arising out of Parasbigha P.S. Case No. 62 of 2019 is hereby quashed as far as the



appellants are concerned. The case will proceed against other
accused persons who are not appellants herein.

(Sandeep Kumar, J)

P. Kumar/ Saif

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