

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1185 of 2020

In
CRIMINAL MISCELLANEOUS No.5672 of 2020

Arising Out of PS. Case No.-606 Year-2017 Thana- BIHTA District- Patna

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1. JULI KUMARI W/o Bablu Kumar R/o village- Sikandarpur, P.S.- Bihta, District- Patna
 2. Guria Devi W/o Vijay Kumar R/o village- Raghobpur, P.S.- Bihta, District- Patna

... .. Appellant/s

Versus

1. The State of Bihar.
2. Jitendra Ram S/o Sopal Ram R/o village- Bihta Harijan Tola, P.S.- Bihta, District- Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Usha Kumari Singh
For the Respondent/s	:	Mr.Binay Krishna
For the Informant	:	Mr. Raj Kumar Chaudhary
		Mr. Mukesh Kr. Suman

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

16 27-01-2025 Heard the learned counsel for the appellants, learned
APP for the State and learned counsel for the informant.

2. This appeal has been preferred for quashing the order dated 31.10.2017 passed by the learned Special Judge SC/ST-cum-Additional Sessions Judge-V, Patna in connection with Special Case No. 674 of 2017 arising out of Bihta P.S. Case No. 606 of 2017.

3. As per the prosecution case, it is alleged that the informant/complainant of this case one Bablu Kumar has not given the land for which he had taken the amount. It is further



alleged that the appellants have obtained the signature of the complainant and his brother on the plain paper. The co-accused Bablu further assured to return the amount of the complainant in his account and said amount was returned also. After returning the money, some accused persons came to the shop of the complainant and started abusing the complainant by taking his caste name and have also taken money from his shop and therefore the present complaint case / FIR has been registered against the appellants.

4. It is submitted by the learned counsel for the appellants that the appellants are innocent and have falsely been implicated in this case on the basis of false and fabricated story. He further submits that the allegations levelled against the appellants are general and omnibus.

5. It has further been submitted by learned counsel for the appellants that the police had submitted final form in the case finding the allegation false against the appellants but the Court below has taken cognizance against the accused by differing with the final form.

6. I have examined the order dated 31.10.2017 and the same appears to be a cryptic order in which the materials have not been discussed by the Special Judge. He has taken



cognizance only on the basis of further statement of the informant.

7. 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.”

8. 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.

9. In view of the above discussions and also 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.

10. Accordingly, the order dated 31.10.2017 passed by the learned Special Judge SC/ST-cum-Additional Sessions Judge-V, Patna in connection with Special Case No. 674 of 2017 arising out of Bihta P.S. Case No. 606 of 2017 by which the cognizance has been taken against the appellants, is hereby quashed

(Sandeep Kumar, J)

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