

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2170 of 2021

Arising Out of PS. Case No.-27 Year-2018 Thana- SC/ST District- Purnia

Amarendra Kumar Amar @ Amlendra Kumar Amar @ Amlendra Kumar
Amar @ Amlendra Kumar S/O Satyadeo Biswas R/O Netaji Chowk, P.S.-
JOGBANI, District-Araria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sanjay Kumar Sharma, Advocate
For the State : Mr. Sadanand Paswan, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 21-01-2025 Heard learned counsel for the appellant and learned
Special P.P. for the State.

2. None has appeared on behalf of opposite party no.
2 despite service of notice.

3. The present appeal has been filed for quashing the
order dated 14.11.2019 passed in Special S.C./S.T. 58 of 2018
arising out of S.C./S.T. P.S. Case No. 27 of 2018 by the learned
Special Judge, SC/ST (POA) Act, Purnea by which cognizance
was taken against this appellant (Sr. No. 6) also under Sections
341, 323, 504 and 506 of the Indian Penal Code and under
Section 3 (i) (x) of the SC/ST (POA) Act.

4. The case of the prosecution in brief is that the
complainant Sanjay Paswan filed a complaint petition No. C.A.
Spl. SC/ST 132 of 2017, against six accused on 20.12.2017



before the court of 1st Additional District and Sessions Judge-cum-SC/ST Special Court, Purnea alleging therein that on 16.11.2017 when the complainant was at his home, the accused persons arrayed as accused No. 1 to 5 accompanied with dangerous weapons came to the house of the complainant searching for the brother of the complainant, one Neeraj Paswan, and started hurling caste based abuses on the complainant and his brother. When the complainant objected, the accused Vinod Mandal ordered other accused persons to assault the complainant. It is alleged by the complainant that during the assault, the accused persons arrayed as accused no. 1 to 5 kept on hurling caste-based abuse and stated that the complainant had deliberately instituted cases and acquired three *bighas* of land including a *pokar* near the *Nath Baba* Temple with the intention to humiliate the accused persons. Upon hearing the commotion, the people from the neighbourhood came and thereafter the accused persons left the place after threatening the complainant. It is further alleged by the complainant that at around 3 PM on the same day a constable from the Police Station Bhawanipur along with the accused Raju Mehta came to the house of the complainant asking the complainant to come to the police station on the instructions of



the SHO of the PS-Bhawanipur who has been arrayed as accused No. 06 in the complainant petition. It is thereafter alleged by the complainant that when the complainant reached the police station at around 04 PM the accused persons Birendra Mandal, Arvind Mandal and Raj Kishore Mandal were already present, thereafter the accused no. 06 started hurling caste-based abuses and threatened the complainant to withdraw the cases against the accused persons. It is also alleged by the complainant that the accused no. 06 threatened to institute false cases against the complainant. When the complainant denied from withdrawing the cases, the accused no. 6 started thrashing the complainant and accused the complainant to have encroached the land belonging to the government. It is alleged that when the complainant objected that the land belonged to the temple and not the government, the accused Raj Kishore and Raju Mehta assaulted the complainant. The complainant lastly alleges that the accused persons wanted to encroach the land in question by running the *anganbari* center.

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



with the final form.

6. I have examined the order dated 14.11.2019. It is a cryptic order in which the materials have not been discussed by the Special Judge. He has only taken cognizance 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 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.

10. The order dated 14.11.2019 passed in Special S.C./S.T. 58 of 2018 arising out of S.C./S.T. P.S. Case No. 27 of 2018 taking cognizance against this appellant is hereby quashed.

(Sandeep Kumar, J)

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