

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23023 of 2025

Arising Out of PS. Case No.-261 Year-2010 Thana- KOTWALI District- Patna

=====

Lalan Kumar @ Lalan Kumar Yadav Son of Late Kamleshwari Prasad Yadav
@ Kamleshwari Prasad Resident of House No.- 239 Hira Lal Lane Lodipur,
Chajubagh, P.S.- Gandhi Maidan, District - Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Md Fazle Karim, Advocate

For the Opposite Party/s : Mr. Parmanand Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 21-08-2025 Heard Mr. Md Fazle Karim, learned counsel

appearing on behalf of the petitioner and Mr. Parmanand

Kumar, learned APP for the State.

2. The present application has been filed for quashing
the order dated 23.04.2014 passed by learned Chief Judicial
Magistrate, Patna in G.R. No.4365 of 2010 arising out of
Kotwali P.S. Case No.261 of 2010, by which cognizance of the
offences has been taken under Sections 224 and 225 of the
Indian Penal Code against the petitioner and other accused
persons.

3. Learned counsel appearing on behalf of the
petitioner submitted that the allegation is general and omnibus
in nature against the accused named in the FIR. So far as the



petitioner is concerned, allegedly he is one of the alleged protesters and had released the three accused from the police custody, while they were hospitalized. FIR also reveals that the petitioner got the three accused released for better treatment but police officials had not taken any action against the petitioner for alleged release of the three accused. The ingredients of Sections 224 and 225 of the Indian Penal Code are not attracted.

4. Learned counsel further submitted that it appears that the Magistrate concerned, in the most mechanical manner, without applying his judicial mind and without considering the material available on record, has taken cognizance *vide* order dated 23.04.2014, which cannot sustain in the eye of law. Learned counsel in this regard has relied upon the judgment of the Apex Court passed in case of ***Pepsi Foods Ltd. And Anr. Vs. SPI Judicial Magistrate and Ors (1998) 5 SCC 749.*** Learned counsel has also relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***G. Sagar Suri vs. State of Uttar Pradesh reported in (2000) 2 SCC 636*** and has submitted that in the aforesaid case, the Hon'ble Supreme Court has held that before issuing process, a criminal court has to exercise a great deal of caution. He has also relied upon the decision of the Hon'ble Supreme Court rendered in the case of



Dayle De'souza vs. Government of India & Anr. reported as (2021) 20 SCC 135 and has submitted that in the aforesaid case, it has been held that it is the duty of the Court not to issue summons in a mechanical and routine manner which would frustrate the detailed procedure given under the Cr.P.C. Lastly, learned counsel has also relied upon the decision of the Hon'ble Supreme Court in the case of ***State of Haryana vs. Bhajan Lal***, reported in ***1992 Supp (1) SCC 335***.

5. Learned APP appearing on behalf of the State has submitted that, the petitioner is named in the FIR and there is specific allegation against him that he along with the other members of the party has forcibly released the accused persons for which cognizable offence is made out, calling for trial.

6. Heard the parties.

7. I have perused the records, the allegation made in the FIR, as well as, the impugned order taking cognizance. From the allegation made in the FIR, it appears that the petitioner along with his 40-50 supporters had allegedly forcibly taken away the accused from the police custody, who were named in the FIR in connection with P.S. Case No. 259 of 2010 while were being treated at Gardiner Road Hospital. At the same time, no reason has been assigned, as to why, they had not tried



to put any resistance and arrested any of the protesters, having been armed with weapon, in getting three accused released from the police custody. Rather the allegation shows that the protest was made for better treatment in absence of proper medical facility to the injured persons, who were undergoing treatment in police custody. The action of the police officers, who have not taken any action against the petitioner and without resistance, they allowed the protesters along with the petitioner to shift the accused for better treatment, shows absolute dereliction in discharging of service on their part by shifting the allegation on the part of the petitioner by lodged FIR under Sections 224 and 225 of the Indian Penal Code against the petitioner.

8. I find it apt to re-produce the provisions of Sections 224 and 225 of the Indian Penal Code, which *inter alia* is as follows:

“224. Resistance or obstruction by a person to his lawful apprehension.—

“Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

225. Resistance or obstruction to lawful apprehension of another person.—



“Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with imprisonment for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; or, if the person to be apprehended, or the person attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; or, if the person to be apprehended or rescued, or attempted to be rescued, is liable under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to imprisonment for life or imprisonment, for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with imprisonment for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.”

9. As I have observed above that from the order taking cognizance dated 23.04.2014, it appears that the allegation made in the FIR is not supported by any evidence collected in course of investigation and at the same time, it don't find any mention giving brief description of the manner in which offence has been committed. In that view, the conviction of the petitioner under Sections 224 and 225 of the IPC would be impossible.

10. The Hon'ble Supreme Court in the case of ***Pepsi Food Limited and Anr. vs. Special Judicial Magistrate***



and Others reported in (1998) 5 SCC 749, has held as under:-

"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 allegation 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 fact of the case and the law applicable thereto. He has to examine the nature of allegations made in the Complaint and evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home 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 examined if any offence is prima facie committed by all or any of the accused."

11. The Co-ordinate bench of this court in the case of ***Dharmesh Prasad Verma vs. The State of Bihar (Cr. Misc. 41702 of 2015)***, in paragraph nos. 27, 28 and 29, had observed as under :-

"27. The need for proper application of mind by the courts at the stage of summoning has been highlighted by the Supreme Court in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, reported in (1998) 5 SCC 749, in para 28 as follows:-

"28. 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 Patna High Court CR. MISC. No.32966 of 2018 dt.15-07-2025 11/13 charge home 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."

28. It would be trite to remark that taking of cognizance and summoning of accused in a criminal case has serious consequence on the liberty of an accused, as pursuant to such order, he is made to take bail and face trial for a criminal offence. An order of cognizance passed in a standardized format by filling up the only perfunctory details buttress an ex facie lack of application of mind in the order of taking cognizance and summoning an accused.

29. In *Fakhruddin Ahmad Vs. State of Uttaranchal and Another*, reported in (2008) 17 SCC 157, once again, in paragraph 17, the Supreme Court has held as follows:-

*"17. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender; that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender." Considering the aforesaid facts of the case and also considering the law laid down by the Hon'ble Supreme Court in the case of *State of Haryana vs. Bhajan Lal* reported as 1992 Supp. (1) SCC 335."*

12. The Apex Court while considering the forceful release of accused in case of ***Malhu Yadav vs State of Bihar*** reported in **(2002) 5 SCC 724**, considering the allegation made against the accused persons observed that conviction under Sections 224 and 225 of the Indian Penal Code, merely because there was a demand to release an accused, is rendered impossible, particularly when no action was taken by the police officers.



13. From the above facts and the elements required as per the provision of Sections 224 and 225 of the Indian Penal Code, I find that the entire criminal proceeding appears to be initiated only on the basis of allegation made in the FIR, the same is not supported by any direct materials and making the petitioner liable for the alleged act would not be sustainable.

14. In view of the discussions made hereinabove and the allegation made in the FIR, I am of the view that allowing application to continue is abuse of process of law and considering the law laid down by the Hon'ble Supreme Court in case of ***Bhajan Lal (Supra)***, the application under Section 528 of the BNSS is allowed.

15. Consequentially, the impugned order dated 23.04.2014 passed by the Chief Judicial Magistrate, Patna in connection with Kotwali P.S. Case No.261 of 2010 is hereby **set-aside** and **quashed** with respect to the present petitioner.

16. Accordingly, the present quashing application stands disposed of.

(Purnendu Singh, J)

Ashishsingh/-

U		T	
---	--	---	--

