

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11497 of 2021

Arising Out of PS. Case No.-151 Year-2019 Thana- JOGBANI District- Araria

=====

MUKESH TYAGI S/o K.P. Tyagi Resident of H.N. 542, Pocket- B Police Enclave, Lohia Nagar, Distt.- Meerut (U.P.), at present Commandant 56, B.N. SSB Bathnaha, P.S.- Jogbani, Distt.- Araria

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Krishna D/o Sri Guljharilal R/o village- Khorl, P.S.- Malsilar, Distt.- Jhunjhunu (Rajsthan), at present SSB, 56 B.N. SSB Bathnaha, P.S.- Jogbani, Distt.- Araria

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. N.K. Agarwal, Sr. Adv. Mr. Kumar Rajdeep Mr. Amresh Kumar Sinha Mr. Saroj Chaudhary Mr. Arvind Kumar Ms. Diksha Kumari.
For the Opposite Party/s	:	Mr. A.G
For the O.P. No. 02	:	Mr. Vaidyanath Thakur

=====

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 20-03-2025 Heard learned Shri N.K. Agarwal learned Senior counsel for the petitioner, learned APP for the State and Shri Vaidyanath Thakur, learned counsel for the O.P. No. 02.

2. This application has been filed on behalf of the petitioner for quashing the order dated 8.6.2020 passed by learned Sessions Judge, Araria in Cr. Revision No. 07 of 2020 and also for quashing the order dated 18.01.2020 passed by learned ACJM-VI, Araria in G.R. No. 1700 of 2019 arising out of Jogbani P.S. Case No. 151 of 2019.



3. It has been alleged in the FIR by the informant, who is herself a constable in 56 BN of SSB, posted at Bathnaha that she from the very beginning has been continuously pressurized by the co-accused Amrita Kumari to satisfy the sexual demands of senior ASI Sushil Kumar and for the same SI Nehan Singh has also pressurized her in different ways. The informant further alleged that when she made a complaint to the commandant, who is the petitioner here, he pressurized her to take back the complaint.

4. It has been submitted by the learned senior counsel for the petitioner that the police started investigation and upon finding no evidence submitted final form, exonerating the petitioner but the Magistrate, differed with the final form and took cognizance against the petitioner.

5. It has further been submitted by the learned senior counsel for the petitioner that the Magistrate, while differing with the final form and taking cognizance, has not given any reason for differing with the final form. He further submits that the petitioner is a man of good character and since his joining in the SSB, no allegation like the present one has been made against him and because of the FIR lodged against him, he is mentally harassed by the informant.



6. Learned senior counsel for the petitioner has also submitted that from the FIR, no offence under Section 354 A and 354 D is made out against the petitioner.

7. In support of his submissions, learned senior counsel for the petitioner has also relied upon the Judgment of the Hon'ble Supreme Court in the case of *Pepsi Foods Ltd. v. Special Judicial Magistrate* reported in (1998) 5 SCC 749 and also in the case of *Delhi Race Club (1940) Ltd. v. State of U.P.* reported in (2024) 10 SCC 690.

8. Learned counsel for the State and learned counsel for the opposite party no. 02 has supported the order taking cognizance and have submitted that the impugned order is just and proper and interference is required in the impugned order.

9. I have considered the submissions of the parties.

10. The police after investigation, has submitted final form and exonerated the petitioner finding no evidence against him but the Magistrate concerned has taken cognizance against the petitioner differing with the final form but the cognizance order appears to be a non-speaking and cryptic order.

11. The impugned orders dated 8.6.2020 and 18.01.2020 are in the teeth of the law laid down by the Hon'ble Supreme Court in the case of *Pepsi Foods Ltd. v. Special*



Judicial Magistrate (Supra), in which the Hon'ble Supreme

Court 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.”

12. The Hon'ble Supreme Court in the case of **Delhi**

Race Club (1940) Ltd. v. State of U.P. (Supra) 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.

13. In view of the facts of the case 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 appeal is allowed.

14. Accordingly, the order dated 8.6.2020 passed by learned Sessions Judge, Araria in Cr. Revision No. 07 of 2020 and the order dated 18.01.2020 passed by the learned ACJM-VI, Araria in G.R. No. 1700 of 2019 arising out of Jogbani P.S. Case No. 151 of 2019 are hereby quashed.

(Sandeep Kumar, J)

Vikas/-

U			
---	--	--	--

