

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.56494 of 2019**

Arising Out of PS. Case No.-65 Year-2017 Thana- MAHILA PS District- Khagaria

DEVENDRA CHAURASIYA @ DEVENDRA KUMAR Son of Late Sita  
Ram Chaurasiya Resident of Village - Baisa, P.S.- Parbatta, District -  
Khagaria.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR Bihar
2. Champa Devi W/O-Mukun Chaurasia R/O Village- Kulharia, P.S.- Parwatta,  
District-Khagaria

... .. Opposite Party/s

**Appearance :**

|                            |   |                                                                                  |
|----------------------------|---|----------------------------------------------------------------------------------|
| For the Petitioner/s       | : | Mr. Syed Arshad Alam<br>Mr. Anjum Perveen<br>Mr. Kamran Fazal<br>Md. Shadab Alam |
| For the Opposite Party/s : |   | Mr. Jitendra Kumar Singh                                                         |
| For the O.P. No. 02        | : | Mr. Ranjeet Kr. Singh.                                                           |

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL ORDER**

9      18-03-2025                      Heard the learned counsel for the petitioner, learned  
  
APP for the State and the learned counsel for the opposite party  
  
no. 02.

2. This application has been filed for quashing the  
  
order dated 09.04.2018 passed by the learned Judicial  
  
Magistrate, Khagaria in Khagaria Mahila P.S. Case No. 65 of  
  
2017.

3. In this case, after investigation, the police  
  
submitted final form exonerating the petitioner but the learned  
  
Magistrate, by the impugned order dated 9.4.2018 has taken



cognizance against the petitioner differing with the final form.

4. Upon perusal of the impugned order dated 9.4.2018, the same appears to be a cryptic and non-speaking order. The Magistrate has not discussed the merits of the case as has been mentioned in the case diary. 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.”*



5. 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.*

6. 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.

7. Accordingly, the order dated 09.04.2018 passed by the learned Judicial Magistrate, Khagaria in Khagaria Mahila P.S. Case No. 65 of 2017, is hereby quashed.

8. The matter is remitted back to the concerned Court below for consideration of the final form afresh in accordance with law.

**(Sandeep Kumar, J)**

Vikas/-

|   |  |  |  |
|---|--|--|--|
| U |  |  |  |
|---|--|--|--|

