

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34925 of 2020

Arising Out of PS. Case No.-9 Year-2018 Thana- CHIKSAUR District- Nalanda

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1. Ajeet Kumar S/O Late Ramje Prasad R/O Village- Kamarathu, Post-Musarhi, P.S.- Chiksaura, District- Nalanda
 2. Indrajeet Kumar S/O Late Ramjee Prasad R/O Village- Kamarathu, Post-Musarhi, P.S.- Chiksaura, District- Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar
2. Naveen Kumar S/o Sri Munni Prasad R/o village- Kamarathu, Post-Musarhi, P.S.- Chiksaura, District- Nalanda

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Neeraj Kumar
For the Opposite Party/s	:	Mr. Ashok Kumar
		Mr. Jharkhandi Upadhyay, APP
For the O.P. No. 2	:	Mr. Rakesh Kumar
		Mr. Satyeshwar Prasad

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

9 02-02-2026 Heard the learned counsel for the petitioners, learned
APP for the State and the learned counsel for the informant.

2. This application has been filed for the quashing of the order dated 17.12.2019 (*incorrectly recorded as 17.12.2020*) passed by the Learned ACJM-I, Hilsa, in Chiksaura P.S. Case No. 09/2018 (*incorrectly recorded as 91/2018*)/G.R. No. 217/18, whereby the Learned Magistrate took cognizance and issued summons against the petitioners, as well as other accused persons, for offences under Sections 341, 323, 504, and 34 of the Indian Penal Code.



3. The learned counsel for the petitioners has submitted that after the institution of the F.I.R., the Investigating Officer conducted an investigation and submitted a charge sheet on 31.12.2018, wherein none of the petitioners were found to be involved in the case. Consequently, the charge sheet was filed only against the accused persons, Subhash Yadav and Gurudev Prasad, for offences under Sections 341, 323, 504, and 34 of the Indian Penal Code. Despite this, the Learned ACJM-I, Hilsa, *vide* his order dated 17.12.2019 (incorrectly recorded as 17.12.2020 by the Learned Court below), took cognizance of the offences under Sections 341, 323, 504, and 34 of the Indian Penal Code.

4. The main contention of the learned counsel for the petitioners is that the learned Magistrate after differing with the final form has passed a cryptic and non-speaking order.

5. The learned counsel for the petitioners, in support of his submission has relied upon a judgment of the Hon'ble Supreme Court passed in ***Pepsi Foods Limited and Anr. vs. Special Judicial Magistrate and Ors., (1998) 5 SCC 749.***

6. The learned counsel for the O.P. No. 2 has opposed the application and has submitted that after considering the materials available on record, the learned Magistrate has



differed with the final form and has taken cognizance.

7. I have considered the submissions of the parties. From the perusal the impugned order, the same appears to be a cryptic and non-speaking order. The learned Magistrate has not discussed the merits of the case. The impugned order of the learned 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***, wherein it 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.”



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 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.

10. Accordingly, the impugned order dated 17.12.2019 is hereby set aside. The matter is remitted back to the concerned Court below for consideration of the final form afresh in accordance with law.

(Sandeep Kumar, J)

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