

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49845 of 2019

Arising Out of PS. Case No.-361 Year-2017 Thana- KATEYA District- Gopalganj

=====

RAKESH GIRI Son of Late Rajendra Giri Resident of Village - Mafiguriyat,
P.O. and P.S.- Kateya, Dist.- Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Vikas Ratan Bharti, Advocate
For the Opposite Party/s : Mr.Jai Narain Thakur, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 20-01-2026 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. This application has been preferred by the petitioner for quashing the order dated 08.08.2018 passed by the learned A.C.J.M - XV, Gopalganj, in Kateya P.S Case No. 361 of 2017 by which cognizance has been taken for offence under section 307 read with section 120 (B) of Indian Penal Code and section 27 of Arms Act against the petitioner.

3. The prosecution story in brief is that three F.I.Rs have been registered for the same occurrence. The present F.I.R



was lodged upon the written report dated 27.11.2017 of one Satyendra Kumar-informant alleging that on 26.11.2017 at 06.30 PM the informant was sitting at his residence with Ramesh Ram and another, meanwhile one Apache Motorcycle upon which two persons were sitting crossed from the front of the house of the informant several times and the informant found the activity of the motorcyclist to be suspicious therefore he informed the Officer-In-Charge of the police station on mobile about the same. Soon thereafter the motorcyclists fired upon the informant however the informant had a narrow escape and upon hearing the sound of gunshot, various persons came and, in the meantime, police had also arrived and thereafter the miscreants were chased and caught. It has been further alleged that on being caught and interrogated the miscreants disclosed and confessed that the present petitioner and one Mantu Singh came along with the miscreants and had identified the informant to the miscreants and that the miscreants were sent by one Tuna Giri. It was further alleged by the informant that he is of the suspicion that Tuna Giri who is the residence of Gopalganj and the petitioner along with others had conspired to kill the informant.

4. Furthermore, for the same alleged occurrence there



are two more FIR instituted and lodged apart from the above-mentioned FIR with respect to the same occurrence i.e. Kateya PS Case No. 360 of 2017 dated 27.11.2017 which was registered by one independent witness namely Kanhaiya Prasad Rai and the same was instituted against unknown persons and Kateya PS Case No. 359 of 2017 giving rise to Trial No. 2082 of 2019 which was instituted by one Kumar Rajanikant SHO, Kateya Police Station for the same set of occurrence.

5. It is the case of the petitioner that his name has appeared on the confessional statement of the accused persons and that due to the informant being on inimical terms with the petitioner and the prevalent local politics the petitioner has been named in this case with false and concocted allegations. Also, as alleged there is no other material to proof the complicity of the petitioner in this case and that the said alleged occurrence has been done by the accused persons at the behest of some criminals who were in conspiracy with them.

6. The learned counsel for the petitioner has submitted that in the aforesaid Kateya PS Case NO. 359 of 2017 cognizance has been taken vide order dated 06.04.2018 by A.C.J.M., XV, Gopalganj and that the petitioner had filed a petition dated 12.06.2019 before the Learned Court below for



amalgamation of the cases and hearing them as one case on one date and the same was disposed of vide order dated 13.06.2019 whereby the learned court below has ordered that both the cases shall be tried together on the same date but separately.

7. The learned counsel for the petitioner has further submitted that it is well settled law that for the same set of occurrence two FIR cannot be lodged, however in the present case three F.I.R. have been lodged for the same set of occurrence which is not permissible in law. Also, there is no legal material available on record to prove the complicity of the petitioner in this case, and the FIR even if it is taken on its face value yet *prima facie* no case is being made out against the petitioner.

8. It is the categorical submission of the learned Counsel for the petitioner that, the impugned order 08.08.2018 is totally unsustainable in the eye of law since, the order appears to have been filled in a proforma which illustrates a total non-application of mind.

9. The state has opposed the prayer of the petitioner and has supported the impugned order.

10. I have heard and considered the submissions of the parties and have perused the material on record.



11. The impugned order dated 08.08.2018 is reproduced herein below:-

महोदय न्यायालय मुकदमा नं. 3103/2015 - 3
दस्तावेज नं. 3103/2015 - 3

न्यायालय अपर मुख्य न्यायिक दंडाधिकारी प्रमोद, गोपालगंज।
कदमा नं. 361/17

08-8-18 आरोप पत्र के विन्दु पर सहायक लोक अभियोक्ता पदाधिकारी को सुना।
प्राथमिकी आरोप पत्र एवं केस कागरी का अवलोकन किया, जिससे यह विदित
होता है कि अनुसंधानकर्ता द्वारा द्वारा-307/12018
37 अर्द्ध किलोमीटर - ना.व.सं. के अंतर्गत नामले
को सत्य पाते हुये आरोप पत्र समर्पित किया गया। प्राथमिकी केस कागरी एवं
आरोप पत्र के अवलोकन से यह विदित होता है कि अनुसंधानकर्ता द्वारा
अभियुक्त- हुन्ना सिरे उर्फ अनवरुद्दौल सिरे -
को अनुप्रेषित दिखाया गया है। अतः साक्ष्य के अभाव में अनुप्रेषित दिखाये गये
अभियुक्त को इस वाद से ~~अनप्रेषित~~ किया जाता है तथा शेष अभियुक्त के
विरुद्ध आरोप पत्र के कठिका-11 में नामांकित- ① अहमद सिरे,
② अहमद सिरे, ③ अजीज सिरे ④ शिवाल उपाध्याय
के विरुद्ध प्रार्थन साक्ष्य है। अतः उनके विरुद्ध प्रथम दृष्टया सत्य प्रतीत होता है।
अतः द्वारा- 307/12018 37 अर्द्ध किलोमीटर -
ना.व.सं. के अंतर्गत अपराध के लिये ~~दण्डित~~ किया जाता है।
वाद दिनांक-02-11-18 को वास्तव्य उपस्थिति। कार्यालय
अभियुक्तों के विरुद्ध समन निर्गत करें।
लेखापित

12. This Court has minutely perused the aforesaid impugned order dated 08.08.2018, and from the perusal of the aforesaid order it is clear that the order has been passed in a mechanical manner without properly appreciating the facts of the case.

13. The Hon'ble Supreme Court rendered in the



case of *Pepsi Food Limited and Anr. vs. Special Judicial Magistrate and Others* reported in (1998) 5 SCC 749 had 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."

14. Further the Hon'ble Supreme Court in the case of *G. Sagar Suri vs. State of Uttar Pradesh* reported as (2000) 2 SCC 636 had held that before issuing process, a criminal court has to exercise a great deal of caution.

15. This Court in the case of *Dharmesh Prasad Verma v. The State of Bihar*, 2017 (1) PLJR 401 has held 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. v. Special Judicial Magistrate**, (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 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 v. State of Uttaranchal, (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.”

30. Keeping in mind the discussions made, hereinabove and the ratio laid down by the Supreme Court in *Pepsi Foods Ltd. (supra)* and *Fakhruddin Ahmad (supra)*, this Court deems it fit and proper to direct that in future Judicial Officers shall refrain from passing orders in formats prepared in advance containing blanks to be filled in with formal details, as has been done in the present case. The Judicial Officers are further directed to pass orders of taking cognizance and summoning accused in a criminal case only after applying their judicial mind to the facts of the case and the law applicable thereto.”

16. This Court in the case of ***Varun Berry & Anr. vs. The State of Bihar & Ors. (Criminal Miscellaneous No.14921 and 2023)*** has held in paragraph nos. 10, 11 and 12 as under :-



“10. From perusal of the cognizance order dated 05.07.2022 passed by learned Magistrate it appears that the same has been passed in a printed format. The cognizance order has been passed by learned Magistrate without any application of mind and these kinds of orders have been repeatedly deprecated by this Court.

11. A co-ordinate bench of this Court in case of **Nokia Siemens Network India Pvt. Ltd & Others Vs. The State of Bihar & Others** passed in Cr. Misc. No. 34891 of 2013 paragraph no. 7 of the aforesaid judgment reads as follows:-

“7. It is true that an elaborate order is not required to be passed to take cognizance of the offence and issue of summons, the order must at least reflect that there has been application of mind. The manner in which the order has been passed, is shocking. The practice of filling-up of blanks in a pre-prepared printed format for passing judicial orders is highly objectionable. I must record that the Judicial Officers must refrain themselves from signing orders on pre-prepared printed formant without considering materials on record.”

12. In view of the above, this application is allowed. The impugned order dated 05.07.2022 passed by learned Chief Judicial Magistrate, Vaishali at Hajipur in connection with Complaint Case No. C-02-37 of 2022 is set aside. The matter is remitted back for fresh consideration by the learned Magistrate at the cognizance stage.”

17. Therefore from the afore-quoted judgments it is patently clear that the order taking cognizance has been passed by merely filling the blanks which is illustrative of complete non-application of mind and is therefore unsustainable.

18. Accordingly, the impugned order order dated



08.08.2018 is quashed and set aside.

19. The matter is remanded back to the concerned trial Court for passing a well-reasoned order in accordance with law.

(Sandeep Kumar, J)

tusharika/-

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

