IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22258 of 2016
Arising Out of PS. Case No.-1617 Year-2008 Thana- PATNA COMPLAINT CASE District-Patna

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Mohit Agrwal, son of Sri Anand Agrwal, resident of M/S Tulshi Enterprises Pvt. Ltd, D 53/97, A-7, Parwatipur Colony, P.S.- Luxa, Guru Bagh, Varanashi UP.

.. ... Petitioner/s

Versus

1. The State of Bihar
2. Sri B.N. Thakur, Chairman of Karpuri Thakur Vichar Manch Asmarak Trust Patna, Daroga Rai Path, P.S.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Niraj Kumar, Advocate
For the Opposite Party/s : Mr. Ashraf Ansariapp, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

6 01-05-2026 1. Heard learned counsel for the petitioner as well as learned APP for the State.

2. The present application has been filed for quashing the order dated 12.08.2009 (hereinafter referred to as 'Impugned order') passed by the learned Judicial Magistrate, Patna (hereinafter referred to as 'Trial Court') in Complaint Case No. 1617(C) of 2008 whereby cognizance was taken against the accused persons including petitioner for the offences punishable under Sections 323, 504 and 384 of the Indian Penal Code, 1860 and summons were directed to be issued against them.

3. The prosecution case, in brief, is that the complainant (O.P. No. 2), describing himself as the Chairman of Karpuri Thakur Vichar Asmark Nayas, instituted Complaint Case No. 1617(C) of 2008 alleging that Akhil Bhartiye Nai

Brahman Mahasabha is a society registered under the Society Registration Act and it had acquired certain land by a registered deed of gift dated 24.11.1931 for the purpose of construction of Mahasabha Building, Nai Brahman Gurukul, Hostel and Updesak School etc., and such land was not liable to be sold. It is alleged that the accused persons, with dishonest intention, sold the said land and misappropriated the property of the Mahasabha. It is further alleged that in order to grab the said property, a forged Sammelan of the Mahasabha was held at Katihar on 21.06.2005 under the president ship of accused no. 1, Dr. Shyam Nath Sharma, which was conducted by accused no. 2, namely, Sri Prem Chand Sharma and organized by accused no. 4, namely, Sardar Suresh, wherein forged proceedings were prepared by impersonating Rajendra Sharma and Ramyad Bahadurpuri and by falsely showing Pandit Darshan Prasad as dead. The O.P. No. 2 further alleged that he was authorized in a meeting dated 25.05.2008 to take legal action in the matter. It is also alleged that on 01.06.2008 accused no. 3, namely Namber Prasad, along with other accused persons, came to the office of the complainant, abused him, assaulted him by fists and slaps, and tore official papers. On the basis of the said allegations, O.P. No. 2 has filed a complaint case before learned Trial Court on

10.06.2008.

4. Learned Trial Court examined the complainant and the witnesses on oath and also directed the police to submit enquiry report, on the basis of the same and other available documents, took cognizance of the offence punishable under Sections 323, 504 and 384 of I.P.C against the accused persons including the petitioner and directed to issue summons against them *vide* the impugned order dated 12.08.2009. Aggrieved thereby, petitioner has preferred this present application.

5. Learned counsel for the petitioner submits that the impugned order is wholly illegal, arbitrary and fit to be quashed. Learned counsel of petitioner further submits that except the name of the petitioner appearing at serial no. 5 in the array of accused persons, there is absolutely no allegation in the body of the complaint petition against him. No specific overt act, participation, or role has been attributed to the petitioner either in the complaint petition or in deposition of any enquiry witnesses. Learned counsel further submits that the allegation relating to sale and misappropriation of the property of Akhil Bhartiye Nai Brahman Mahasabha is purely civil in nature and has been given a criminal colour. So far as the allegation of abuse and assault, it is specifically against one Nabmer Prasad

and, allegation of extortion is alleged against none. Hence, the essential ingredients of the said offence are completely absent.

6. Learned counsel of petitioner further submits that the learned Trial Court initially conducted inquiry under Section 202 Cr.P.C. himself and thereafter directed police investigation vide order dated 13.01.2009, but without receiving any police report, again proceeded to hear the matter afresh on the basis of earlier inquiry materials, which is a procedure unknown to law and contrary to the provisions of the Code of Criminal Procedure. Learned counsel submits that the impugned order is a mechanical order passed without proper application of judicial mind. The learned Trial Court merely observed that a *prima facie* case is made out without discussing any material against the petitioner or recording satisfaction as to how the ingredients of the alleged offences are attracted against him. It is further submitted that summoning an accused in a criminal case is a serious matter and cannot be done in a routine and casual manner. It is thus submitted that continuation of the criminal proceeding against the petitioner, in absence of any specific allegation and supporting material, would amount to abuse of the process of the Court and, therefore, the impugned order, so far as it relates to the present petitioner, deserves to be quashed.

7. Despite sufficient opportunity given to O.P. No. 2, no one is present on his behalf.

8. Learned A.P.P. submits that the learned Trial Court, after considering materials on record, found prima facie case and accordingly took cognizance and directed issuance of summons against accused persons including petitioner herein. It is submitted that at the stage of cognizance, detailed appreciation of evidence is not required and, therefore, the impugned order requires no interference.

9. Having heard the learned counsel for the parties as well as the learned A.P.P. for the State and upon perusal of the materials available on record, it appears that the present case arises out of Complaint Case No. 1617(C) of 2008 instituted by the O.P. No. 2, claiming himself to be the Chairman of Karpuri Thakur Vichar Asmark Nayas, alleging that the accused persons had illegally sold and misappropriated the land and property of Akhil Bhartiye Nai Brahman Mahasabha, which had been acquired through a registered deed of gift for institutional purposes. It is further alleged that a forged Sammelan was held on 21.06.2005 and forged proceedings were prepared to facilitate such illegal act. O.P. No. 2 also alleged that on 01.06.2008 accused no. 3, namely Namber Prasad, along with

others, came to his office, abused and assaulted him, and tore official papers. The learned Trial Court found *prima facie* case under Sections 323, 504 and 384 I.P.C. and directed issuance of summons against the accused persons including the present petitioner *vide* Impugned Order. The main lis before this court is as to "*whether Impugned Order of directing issuance of summons against petitioner requires interference of this court while exercising inherent jurisdiction.*"

10. The Hon'ble Supreme Court in ***Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd. & Ors.*** reported in ***(2022) 15 SCC 430*** has explained implication of absence of specific allegation against an accused in a private complaint on issuance of summons and held as under:

> ***"8.2.*** *As observed by this Court in Pepsi Foods Ltd. v. Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] and even thereafter in a catena of decisions, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. In para 28 in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , it is observed and held as under : (SCC p. 760)*
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> *"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 scrutinise 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."

8.3. *As held by this Court in India Infoline Ltd. [GHCL Employees Stock Option Trust v. India Infoline Ltd., (2013) 4 SCC 505 : (2013) 2 SCC (Cri) 414] , in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager*

> *and/or Planner/Supervisor of A-1 and A-6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A-1 and A-6."*

11. In the present case, it appears from the complaint petition that the name of the present petitioner finds place only in the array of accused persons at serial no. 5, but except such mention, no specific allegation has been made against him in the body of the complaint petition. Neither any overt act nor any specific role has been attributed to the petitioner with regard to the alleged illegal sale of the Mahasabha land, alleged misappropriation of its property, or the alleged occurrence of assault and abuse dated 01.06.2008. It further appears from the solemn affirmation of the O.P. No. 2 recorded under Section 200 Cr.P.C. that no specific statement has been made therein against the present petitioner.

12. It is well settled that summoning of an accused in a criminal case is a serious matter and the Trial Court is required to apply judicial mind to the materials available on record before issuing process. The Trial Court must be satisfied that sufficient grounds exist for proceeding against the accused and such satisfaction must be reflected from the order itself.

Mere reproduction of sections and a bald observation that a *prima facie* case is made out, without discussing the role of the accused or the materials supporting such conclusion, is not sufficient.

13. In the present case, the impugned order merely records that *prima facie* case under Sections 323, 504 and 384 I.P.C. is made out against the accused persons including petitioner herein and summons were directed to be issued. The Impugner Order does not disclose any material showing involvement of the present petitioner nor does it indicate proper application of judicial mind by the learned Trial Court.

14. In view of the aforesaid factual matrix, this Court finds that the present case squarely falls within the principles laid down by the Hon'ble Supreme Court in ***State of Haryana and Ors. v. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) SCC 335*** and ***Pradeep Kumar Kesarwani v. State of Uttar Pradesh & Anr.***, reported in ***2025 SCC OnLine SC 1947***, wherein categories of cases have been illustratively enumerated where exercise of inherent powers under Section 482 of the Cr.P.C. would be justified. In particular, the present case falls within the category where the allegations made in the complaint, even if taken at their face value and accepted in entirety, do not

prima facie constitute any offence against the petitioner Accordingly, continuation of the criminal proceeding against the petitioner, in absence of any specific allegation and supporting material, would amount to abuse of the process of the Court.

15. Accordingly, in view of the discussions made hereinabove, this Court finds that the impugned order dated 12.08.2009 passed by the learned Trial Court in connection with Complaint Case No.- 1617 (C) of 2008 qua the petitioner, cannot be sustained in the eyes of law and are hereby set aside.

16. Resultantly, the entire criminal proceeding arising out of the aforesaid case, so far as it relates to the present petitioner, stands quashed.

17. The present Criminal Miscellaneous Application, accordingly, stands allowed.

18. Let a copy of this order be transmitted to the Court concerned forthwith for information and necessary action.

(Sunil Dutta Mishra, J)

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