

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8415 of 2020**

Arising Out of PS. Case No.-11 Year-2019 Thana- PIRBAHOR District- Patna

1. Mukesh Kumar, son of Sri Binod Kumar.
2. Karunesh Kumar @ Karuneshwar Kumar, son of Sri Binod Kumar.
3. Sumitra Devi, W/o- Binod Kumar.
4. Ritu Kumari @ Ritu Devi W/o- Rakesh Kumar.
5. Rashmi Devi @ Rashmi Kumari W/o- Rajesh Kumar.
All resident of Akharaghat, Nazipur, P.S.- Ahiyapur, District- Muzaffarpur.
6. Rubi Devi @ Anjana Rani W/o- Uma Shankar Singh Resident of Village- Basokund, P.O.- Vaishali, P.S.- Saraiya, District- Muzaffarpur.
7. Varsha Devi @ Vandana Rani @ Versa Devi W/o- Adarsh Singh Resident of Village- Nauri, P.O.- Mahindwara, P.S.- Runi Saidpur, District- Sitamarhi.
8. Sahil Raj @ Sahil Kumar S/o- Vinod Kumar.
9. Dilip Kumar @ Dilip Kumar Singh S/o- Rajeshwar Singh.
Both are resident of Village- Namidih, P.O.- Ghataro, P.S.- Lalganj, District- Vaishali.

... .. Petitioners

Versus

1. The State of Bihar
2. Shailesh Kumar S/o- Late Satya Narayan Singh Resident of House No. 4, Road No. 8, West Anandpuri, Boring Canal Road, Patna, P.S.- Sri Krishna Puri, District- Patna.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Rakesh Kumar Samrendra, Advocate Mr. Harsh Vardhan, Advocate Mr. Manoj Sah, Advocate
For the State	:	Mr. Shailendra Kumar, APP Mr. Jharkhandi Upadhyay, APP
For the Opp. Party No.2	:	Dr. Alok Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

C.A.V. JUDGMENT

Date : 01-05-2026

This application has been filed challenging the
order dated 26.06.2019 passed by the learned Chief Judicial



Magistrate, Patna, whereby the learned Magistrate has taken cognizance against the petitioners for the offence under sections 341, 323, 504 read with section 34 of the Indian Penal Code in connection with Pirbahore P.S. Case No.11 of 2019.

2. The present F.I.R. has been instituted by the informant - Shailesh Kumar *inter alia* alleging that while the informant was accompanying his daughter and wife for a proceeding before the Patna Civil Court in connection with Shri Krishnapuri P.S. Case No.60 of 2018, which was filed by his daughter, against her husband and his family members, his son-in-law and his family members started abusing and assaulting his daughter inside the Court premises. It is alleged by the informant that the accused persons also threatened him to compromise the earlier criminal case or else they would kill his family members. It is also alleged that the accused Karunesh Kumar, had also snatched Rs.2000/- from the pocket of the informant.

3. Upon completion of investigation, the Police submitted charge-sheet against the petitioners under sections 341, 323, 504 read with section 34 of the Indian Penal Code. Thereafter, the learned C.J.M., Patna took cognizance against the accused persons under sections 341, 323, 504 read with



section 34 of the Indian Penal Code.

4. The learned counsel for the petitioners, at the outset, has submitted that the informant is the father-in-law of the petitioner no.1 and on the date of occurrence, the petitioner and his family members were present in the Patna Civil Court for furnishing bail bonds in the Court of the learned S.D.J.M., Patna, and at that time, the daughter of the informant i.e. the wife of the petitioner no.1, started abusing him and his family members. The aforesaid incident was immediately informed to the Presiding S.D.J.M., Patna. Subsequently, the petitioner no.3 instituted Pirbahore P.S. Case No.10 of 2019 on the alleged assault and manhandling at the hands of the informant and his family members. Further, a petition dated 28.01.2019 was submitted before the Senior Superintendent of Police, Patna for securing the CCTV footage installed in the Court premises and conduct an impartial enquiry/ investigation in the matter.

5. It is emphasized by learned counsel for the petitioners that the falsehood of the informant is evident from the fact that petitioner no.8, who is arrayed as an accused in the present F.I.R. was not even present in the Court premises on the date of occurrence. Further, it is submitted that the petitioner no.9, who is not an accused in the earlier case viz. Shri



Krishnapuri P.S. Case No.60 of 2019, was present in the Court merely to assist the other family members.

6. It is the categorical submission of learned counsel for the petitioners that in retaliation and as a counter blast to the Pirbahore P.S. Case No.10 of 2019 which has been instituted by the petitioner no.3 against the informant and his family members, the informant has instituted the present case.

7. It is argued by learned counsel for the petitioners that on the date, when alleged incident took place in the Court premises the petitioners were present to furnish their bail bonds before the Court of learned S.D.J.M., Patna, however, it is pointed out that no date was fixed in the aforesaid trial on 05.01.2019 and therefore, there was no occasion for the informant and his family members to be present in the Court premises on the aforesaid date. It is further argued that the informant, who is a practicing Advocate, has deliberately planned to attack the petitioners with an intention to harm them.

8. Learned counsel for the petitioners has also submitted that from the perusal of the F.I.R., it is evident that only vague and bald allegations have been made against the petitioners and as such, the prosecution stands vitiated on the strength of the judgment of the Hon'ble Supreme Court in the



case of *Pritam Ashok Sadabhule vs. the State of Maharashtra & Ors.* reported as (2015) 11 SCC 769.

9. It has categorically been submitted by learned counsel for the petitioners that the impugned order by which the cognizance has been taken against the petitioners is a cryptic and non-speaking order as no materials have been discussed by the learned Magistrate based on which the cognizance has been taken.

10. By making the aforesaid submissions, it has been submitted by learned counsel for the petitioners that the impugned order of cognizance has been passed mechanically without application of judicial mind and therefore, the same is unsustainable in law.

11. It has been argued on behalf of the opposite party no.2 that once the Police, after completing investigation, has filed charge-sheet and once the learned Magistrate after considering the materials available on record has proceeded to take cognizance, this Court may not interfere with the impugned order taking cognizance against the petitioner.

12. I have considered the submissions of the parties and perused the F.I.R. including the order taking cognizance.



13. From the records, it appears that both the parties are entangled in a matrimonial discord and have been litigating extensively for the past several years. The present F.I.R. has been instituted by the informant, who is the father-in-law of petitioner no.1. Pertinently, several criminal cases as well as a Divorce proceeding are pending between the petitioners and informant side.

14. From the reading of the present F.I.R., it appears that a scuffle took place inside the Court premises, when the petitioners were present at the Civil Court, Patna to furnish their bail bonds and for the said incident, two F.I.Rs. have been registered in Pirbahore Police Station, both of even date. Further, the F.I.R. appears to be a motivated one on account of marital discord and bitterness between the parties. The criminal proceeding could not be an instrument of oppression or motivated harassment to settle personal grudge.

15. The Hon'ble Supreme Court in the case of ***State of Haryana & Ors vs. Ch. Bhajan Lal & Ors.*** reported in ***AIR 1992 604*** has held as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter 14 and of the principles of law enunciated by this



Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such a power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at the face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a*



Magistrate within the purview of Section 155(2) of the Code;

- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the*



Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

16. The Hon'ble Supreme Court in the case of ***Punjab National Bank v. Surendra Prasad Sinha*** reported in ***AIR 1992 SC 1815*** has held that judicial process could not be an instrument of oppression or needless harassment. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it could not be the means to wreak personal vengeance.

17. It is a settled proposition of law that the inherent powers of this Court under section 482 of the Cr.P.C. (section 528 of the B.N.S.S.) are to be utilized sparingly and cautiously. It is equally settled that the power must also be exercised to do real and substantial justice.

18. Now, turning to the facts of the present case, it appears that the present F.I.R. has been filed as a counter blast



to the F.I.R which has been lodged by the petitioner no.3 and propeled by the animosity between both the parties. Therefore, this Court is of the opinion, the present F.I.R. has maliciously been instituted against the petitioners in retaliation and with an ulterior motive for wreaking vengeance and this kind of malicious prosecution at the instance of the informant should not be allowed to continue.

19. Further, from the perusal of the impugned order taking cognizance, it appears that there is complete lack of application of judicial mind since no material has been discussed, based on which the learned Magistrate has taken cognizance against the petitioners.

20. The Hon'ble Supreme Court in the case of ***Pepsi Food Ltd. & Anr. vs. Special Judicial Magistrate & Ors.*** reported in ***(1998) 5 SCC 749.***

“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 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.”

21. The Hon’ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. & Ors. vs. State of U.P. & Anr.*** 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.”

22. Therefore, it is clear that the wheel of criminal prosecution cannot be set in motion in a mechanical manner and the Magistrate cannot act as a mere post office while taking cognizance of an offence. In the present case, it appears that the present F.I.R. has been instituted with the sole purpose of settling the personal scores between the parties, who are entangled in a matrimonial discord and the learned Magistrate, has failed to apply judicial mind while taking cognizance since no material has been discussed, based on which cognizance could have been taken against the petitioners.



As such, the impugned order taking cognizance is a cryptic and non-speaking one and the same is unsustainable.

23. Accordingly, this application is allowed. Accordingly, the impugned order taking cognizance dated 26.06.2019 passed by the learned Chief Judicial Magistrate, Patna and all consequential proceedings arising therefrom are hereby quashed *qua* the petitioners.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
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