

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31049 of 2018

Arising Out of PS. Case No.-88 Year-2009 Thana- GANDHIMAIDAN District- Patna

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1. Anil Kumar Sharma @ Anil Sharma and Anr Son of Late Chandrika Singh, Resident of Village- Bidhipur, P.O.- Karauta, P.S.- Salimpur, District- Patna.
 2. Sameer Kumar Singh, Son of Late Rajendra Pd Singh, R/o Village- Milki, P.S.- Gangta, District- Munger.

... .. Petitioner

Versus

The State Of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Kunal Tiwary, Advocate
For the State : Smt. Madhuri Lata, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 15-07-2025

Heard learned counsel for the petitioners and learned APP for the State.

2. By way of this application, the petitioners have challenged the order dated 22.12.2009 passed by the learned the learned Chief Judicial Magistrate, Patna, in connection with Gandhi Maidan P.S. Case No.88 of 2009, whereby the learned Magistrate has taken cognizance against the petitioners under Section 171, 171-C and 171-F of the Indian Penal Code. Subsequently, by moving an Interlocutory Application No.01 of 2025, the petitioners have prayed for amendment in the prayer portion of the main petition and challenged the entire prosecution proceeding arising out of Gandhi Maidan P.S. Case No. 88 of 2009 dated 22.03.2009.

3. As per the F.I.R., the informant Dharendra



Singh, Block Agriculture Officer, who was deputed at the district control room as Duty Magistrate and on 22.03.2009 had visited Maurya hotel where the press conference of State Congress Committee was ensuing. It is alleged that the informant had visited the Maurya hotel to ensure compliance with the Model Code of Conduct, thereupon, he saw that one vehicle bearing registration no. HR26AM 5805 had the party sign of the Congress party, the vehicle BR1AB 2156 had a flag, i.e., a flag bearing a charkha on the tricolour flag belonging to the *Congress Seva Dal*, a Jeep bearing registration no. DED 7406 on which a board with Pradesh Adyaksh, Congress Seva Dal affixed on the bumper and Vehicle bearing no.UP-32-BV4742 bore a flag with the *charkha*.

3.1. It is further alleged that upon enquiring about the aforesaid four vehicles, the informant came to know that the vehicle bearing registration number HR 26AM 5805 belonged to Sadhu Yadav @ Anirudh Prasad, whereas the Vehicle bearing no. BR 1 AN 2156 belonged to Anil Sharma-petitioner, the State Congress, Sadakat Aashram. The vehicle bearing no. DED 7406 belonged to Ajay Kumar Chaudhry, State Congress *Sadaqat Aashram* and lastly the vehicle with the registration number UP-32-BV 4742 belonged to unknown persons. Based on the



written report of the informant dated 22.03.2009, the present F.I.R was registered as Gandhi maidan P.S. Case No. 88 of 2009 on 22.03.2009 under sections 171, 171 (C) and 171(F) of the Indian Penal Code against three named accused persons including petitioner no.1 and one unknown person. The police submitted charge sheet on 31.08.2009 wherein the name of the petitioner no.2 was also added in the array of the accused in connection with vehicle bearing registration number UP32BV 4742. Vide impugned order dated 22.12.2009 the trial Court took cognizance of offence under sections 171, 171(C) and 171(F) of the Indian Penal Code.

4. Learned counsel for the petitioner submits that from perusal of the F.I.R., it appears that none of the ingredients of the offences as alleged have been made out against the petitioners. There is no specific allegation against the petitioner no.2 whose name was subsequently added in the array of accused in the chargesheet. He further submits that even if the statements made in the F.I.R. is taken to be true then also no offence is made out under sections 171, 171(C) and 171(F) of the Indian Penal Code. It is emphasized by the learned counsel for the petitioners that from the bare perusal of the F.I.R. it only emerges that when the informant visited Maurya hotel and



during the inspection, the informant found one four-wheeler vehicle bearing registration no. BR 1 AB 2156 belonging to Anil Sharma, State Congress, Sadaqat Ashram. In fact, the name of the petitioner no.2 is not even mentioned in the F.I.R and has been added in the charge sheet subsequently. Further, there is absolutely not even a whisper of allegation against the petitioners which could even remotely attract the provisions of section 171, 171(C) or 171(F) of the Indian Penal Code.

5. It has further been submitted that pursuant to the F.I.R. the police filed the charge-sheet mechanically against the petitioners and other accused persons under section 171, 171(C) and 171(F) of the Indian Penal Code and the learned Magistrate without appreciating the facts in its right perspective and without applying the judicial mind has taken cognizance against the petitioner under the aforesaid sections. It has also been submitted that the impugned order, by which the cognizance has been taken against the petitioner, is a non-speaking order

6. Learned counsel for the petitioner has relied upon the decision of 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 wherein it



has been 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."

7. Learned counsel for the petitioner has also relied upon the decision of the Hon'ble Supreme Court rendered in the case of **G. Sagar Suri vs. State of Uttar Pradesh** reported as **(2000) 2 SCC 636** and has submitted that in the aforesaid



case, the Hon'ble Supreme Court has held that before issuing process, a criminal court has to exercise a great deal of caution.

8. Lastly, learned counsel for the petitioner has also relied upon the decision of the Hon'ble Supreme Court in the case of *State of Haryana vs. Bhajan Lal*, reported in *1992 Supp (1) SCC 335*.

9. Learned APP appearing on behalf of the State opposes the application by submitting that the Magistrate after going through the materials available on record has rightly taken cognizance against the petitioners and therefore, the impugned order taking cognizance does not require any interference.

10. Considered the submissions of the parties and perused the material on record.

11. At this stage, it would be apposite to reproduce the section 171, 171(C) and 171(F) of the Indian Penal Code, 1860, which reads as under :-

“171. Wearing garb or carrying token used by public servant with fraudulent intent.— Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that



class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

...

171C. Undue influence at elections.—(1) *Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.*

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(a) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or
(b) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,
shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise or a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section.



...

171F. Punishment for undue influence or personation at an election.—*Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both.*”

12. From the bare reading of the afore-quoted sections, it is apparent that none of the ingredients of the aforesaid three sections are even remotely made out against the petitioners. For attracting section 171-C of the Indian Penal Code interference or attempts to interfere with the free exercise of any electoral right has to be alleged. From the reading of the F.I.R., no allegation of undue influence has been alleged by the informant. The only allegation is that upon inspection the informant / Duty Magistrate had found that certain vehicles affixing certain political flags/signs/boards were parked at the hotel, where the press conference was being held. The aforesaid allegation is not sufficient to attract the rigors of section 171-C of the Indian Penal Code since no allegation of undue influence was made against the petitioners. Section 171-F deals with the punishment for undue influence and personation at an election. Moreover, from the reading of the F.I.R. it appears that even section 171 of the Indian Penal Code is not attracted in the



present case.

13. Even otherwise, the impugned order taking cognizable *prima facie* reflects that the learned Magistrate has not applied his judicial mind to the materials placed before him and he has only filled the blanks of the order. The impugned order indicates that the Magistrate has perused the materials on record and found *prima facie* case against the accused persons. There is no mention about the materials based on which the learned Magistrate has taken cognizance against the accused persons.

14. 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.”

15. 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.”

16. Upon a close perusal of the order taking cognizance, it would be apparent that while taking cognizance against the petitioners the learned Magistrate has even not discussed the facts and materials available on record and therefore, there is no proper application of judicial mind.

17. Keeping in mind the facts of the present case particularly the complete absence of any direct material on record to fasten the petitioners with the offences under section 171, 171-C and 171-F of the Indian Penal Code, I am of the considered view that that allowing the prosecution to continue would amount to abuse of the process of the law. The only



thread linking the petitioners with the alleged offences is the fact that the Duty Magistrate/informant had observed certain vehicles which contain political flags/signs/boards, which is insufficient to attract the rigors of the aforesaid offences. Even the order taking cognizance is not speaking order.

18. This Court is of the view that in the present case the cognizance has been taken against the petitioners on a printed format and therefore, there is no application of judicial mind while taking cognizance against the petitioners. The practice of filing up of blanks in a pre-prepared printed format for passing judicial orders is highly objectionable.

19. Considering the aforesaid facts and also the law laid down by the Hon'ble Supreme Court in the case of *Pepsi Food (supra)* and the decision of this Court in the case of *Nokia Siemens Network India (supra)*, I am of the considered view that the order taking cognizance is bad in law and the same cannot be sustained.

20. In view of the aforesaid discussions, this application is allowed. Accordingly, the F.I.R. vide Gandhi Maidan P.S. Case No.88 of 2009 and all consequential proceedings arising therefrom including the impugned order dated 22.12.2009 passed by the learned Chief Judicial



Magistrate, Patna in connection with Gandhi Maidan P.S. Case
No.88 of 2009 are hereby quashed qua these petitioners.

21. Accordingly, Interlocutory Application No.01
of 2025 stands disposed of.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R
CAV DATE	N/A.
Uploading Date	16.07.2025
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