

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22003 of 2019

Arising Out of PS. Case No.-161 Year-2016 Thana- BENIPATTI District- Madhubani

1. Deo Chandra Chaudhary @ Devendra Chaudhary, S/o Late Upendra Chaudhary, Resident of Village- Dhanukhi Chanpura West, P.S.- Benipatti, District- Madhubani.
2. Manju Devi, Wife of Shyam Sunder Yadav, Resident of Village- Uren, P.S.- Benipatti, District- Madhubani.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Abhay Kumar Thakur, Adv.

For the Opposite Party/s : Mr. Shyameshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 17-09-2026

1. Heard the parties.

2. The petition has been filed for quashing the order dated 12.06.2018 passed in GR no.825 of 2016 arising out of Benipatti P.S. case no. 161 of 2016 passed by the Additional Chief Judicial Magistrate, Benipatti, District- Madhubani, whereby and whereunder cognizance has been taken for the offences punishable under Sections 406, 409, 420 and 34 of the IPC, and processes issued against the petitioners and other accused persons on the basis of charge-sheet submitted by the I.O. of the case.

3. The prosecution case in brief is that the Block Education Officer, Benipatti, District- Madhubani issued letter



bearing letter no.696 dated 14.10.2016 to the SHO, Benipatti Police Station for registering case against the named persons stating therein that for the several financial years for construction of additional class room/Head Master room funds were allotted, but work has not been initiated/completed which is *prima-facie* a case of defalcation. It is further stated that in the said letter that the District Programme Officer (Education to all), Madhubani vide his letters mentioned in the said letter stating therein that the DPO has ordered to lodge FIR against the concerned in-charge Head Master of schools for defalcation of government money, and for infringement of right to education to the children.

4. On the basis of aforesaid, Benipatti P.S. Case No.161 of 2016 was registered for the offences punishable under Sections 406, 409, 420, 34 of the IPC against the petitioners.

5. Without arguing on other available merits, learned counsel appearing on behalf of petitioners straightaway submitted that impugned order dated 12.06.2018 is on the printed proforma, without application of judicial mind, and therefore, same is not sustainable in the eyes of law.

6. For better understanding of the fact, it would be apposite to reproduce the cognizance order dated 12.06.2018 hereby below:-



In the court of A.C.J.M. Benipatti.

GOVT. OF BIHAR
Department of Registration,
Excise & Prohibition
District Court Madhubani

भारत
00000
0000010
365423
INDIA

STAMP DUTY
00000
-2.2.2019
3730
BIHAR
02-02-19

COURT FEE
Authorization no : 2656
02-02-19

301
30-01-19

301
30-01-19

3730
521486
H.C.C.

न्यायालय अपर मुख्य न्यायिक दण्डाधिकारी, बेनीपट्टी।

जी०आर० सं० ८२५/१६
नं० १५२/१६ थाना कांड सं० १६१/१६

12/6/2018 अभिलेख आज संज्ञान के बिन्दु पर सुनवाई हेतु प्रस्तुत किया गया। अभिलेख का अवलोकन किया, अभिलेख अवलोकन से विदित होता है कि अनसुधानकर्ता द्वारा अभियुक्त (१) मोह अणु (२) रिखा देवी (३) देव प्रसाद चौधरी (४) अर्जुन चौधरी (५) मंगु देवी के विरुद्ध आरोप पत्र धारा 406, 409, 420/34 भा०द०वि० के अन्तर्गत समर्पित किया गया है।

प्राथमिकी, कांड दैनिकी एवं अभिलेख पर उपलब्ध समस्त सामग्रीयों के अवलोकन से विदित होता है कि आरोप पत्र के स्तंभ (१) में वर्णित अभियुक्त (१) मोह अणु (२) रिखा देवी (३) देव प्रसाद चौधरी (४) अर्जुन चौधरी (५) मंगु देवी के विरुद्ध धारा 406, 409, 420/34 भा०द०वि० के अन्तर्गत प्रथम दृष्टया अपराध का मामला सत्य प्रतीत होता है।

अतः अभियुक्त के विरुद्ध उपरोक्त धाराओं के अन्तर्गत दण्डनीय अपराध का संज्ञा लिया जाता है। अभिलेख विचारण एवं निस्तारण हेतु निर्दिष्ट कार्यालय लिपिक अभियुक्त के विरुद्ध सम्मन निर्गत करें। दिनांक ६-१०-१६ वास्ते उपस्थिति।

लेखापित
अ०मु०न्या०दण्डा०

Certified that the Photo state copy Prepared from the original documents to the prosses
Clerk In-charge Photo State Copy Sec. Benipatti

Certified to be a True Photo Copy Authorised Signature U/S 76 Act, of 1976
I/C Judge Incharge Copies Dept. Benipatti

7. In the case of **Darshan Singh Ram Kishan v.**

State of Maharashtra, [(1971) 2 SCC 654], the Hon'ble

Court was pleased to observe that the process of taking cognizance does not involve any formal action, but it occurs as soon as the Magistrate applies his mind to the allegations and,



thereafter, takes judicial notice of the offence. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position where the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, *prima-facie* he does so of the offence or offences disclosed in such report.

8. It is pointed out that Magistrate is not required to pass detailed reasoned order at the time of taking cognizance on the charge sheet, but it does not mean that order of taking cognizance can be passed by filling up the blanks on printed proforma. At the time of passing any judicial order including the



order taking cognizance on the charge sheet, the Court is required to apply judicial mind and even the order of taking cognizance cannot be passed in mechanical manner.

9. In view of aforesaid submission and by taking note of fact that judicial orders cannot be allowed to be passed in a mechanical manner either by filling in blank on a printed proforma or by affixing a ready made seal etc., of the order on a plain paper. Such tendency must be deprecated and cannot be allowed to perpetuate. This reflects not only lack of application of mind to the facts of the case but is also against the settled judicial norms. Therefore, this practice must be stopped forthwith.

10. The cognizance/summoning of an accused in a criminal case is a serious matter and the order must reflect that Magistrate had applied his mind to the facts as well as law applicable thereto, whereas the impugned cognizance order was passed in mechanical manner without application of judicial mind and without satisfying himself as to which offence were *prima-facie* being made out against the applicant on the basis of the allegations made by the complainant. The impugned cognizance order passed by the learned Magistrate is against the settled judicial norms.



11. It appears that this Court is *prima-facie* convinced that the cognizance against these petitioners was taken in a very mechanical manner that too in a typed proforma, by way of fill up the blanks, as it is apparent from the impugned order of cognizance, without assigning any reason, therefore, the impugned order dated 12.06.2018 is hereby quashed and set-aside with a direction to the learned trial court to pass a fresh order supplying reasons in accordance with law, if the matter is still pending before the learned trial court.

12. Accordingly, the present petition stands allowed.

13. Let the copy of the judgment be sent to learned trial court immediately.

(Chandra Shekhar Jha, J.)

Raushan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.09.2026
Transmission Date	17.09.2026

