

**Hariom Agarwal Vs. State and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/759991](http://sooperkanoon.com/759991)

**Court :** Rajasthan

**Decided On :** May-03-2006

**Reported in :** RLW2006(3)Raj2379; 2006(4)WLC286

**Judge :** Harbans Lal, J.

**Acts :** Indian Penal Code (IPC) - Sections 34, 120-B, 324, 323, 323, 342, 353, 392 and 504; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3), 200, 202 and 482

**Appeal No. :** S.B. Criminal Misc. Petition No. 756 of 2006

**Appellant :** Hariom Agarwal

**Respondent :** State and ors.

**Advocate for Def. :** Arun Sharma, PP for State

**Advocate for Pet/Ap. :** Amit Jindal, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Harbans Lal, J.**

1. This Cr. Misc. petition Under Section 482 Cr.P.C. is directed against the order dated 8.11.2005 whereby, learned Chief Judicial Magistrate Baran has taken

cognizance of offences Baran has taken cognizance of offences against Chetan Kumar, Dharmendra Kumar and Praveen Kumar only in Cr. Case No. 279/2005 and has refused to take cognizance against Smt. Veena Jain, Snnt, Asha Jain and Vipul, non-petitioners No. 2 to 4.

2. The relevant facts of the case are that a complaint came to be filed by the petitioner against non-petitioners No. 2 to 4 and Chetan Kumar, Dharmendra Kumar and Praveen Kumar for offences Under Sections 342, 353, 392, 324, 504 and 120-B I.P.C. in the Court of Chief Judicial Magistrate Baran who forwarded it Under Section 156(3) Cr.P.C. to Police Station Kotwali Baran for investigation. The police registered a case F.I.R. No. 59/2005 and after investigation submitted negative final report. The petitioner filed protest petition before the court whereupon, statement of the complainant and his witnesses were recorded Under Sections 200 and 202 Cr.P.C. The learned Court again sent the record to the S.H.O. Kotwali Baran for further investigation but without making further investigation again negative final report was submitted. The learned court below took cognizance of the offences Under Sections 342 and 323/34 I.P.C. vide order dated 8.11.2005 only against three accused persons namely; Chetan Kumar, Dharmendra Kumar and Praveen Kumar and declined to take cognizance of the offences against non-petitioners No. 2 to 4.

3. Aggrieved by the said order, this petition has been filed.

4. I have heard learned Counsel for the petitioner and the learned P.P. for the State on the admission of this petition.

5. learned Counsel for the petitioner has contended that there being sufficient material against non-petitioners No. 2 to 4, the learned court below ought to have taken cognizance against them but has abused the process of law by not taking cognizance against non-petitioners No. 2 to 4.

6. Learned Public Prosecutor has supported the order of the Court below.

Their lordships of the Hon'ble Supreme Court has propounded in the case of Pepsi Food's reported in : 1998 CriLJ1 that:

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.

7. Indeed, in view of the aforesaid judicial pronouncement by the Hon'ble Apex Court, the learned Magistrate was required to apply its mind to the facts of the case and to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof. The learned court below has rightly applied its mind to the facts and evidence on record in coming to the conclusion that there is no sufficient material to take cognizance of the offences against non-petitioners No. 2 to 4 whereas, there is sufficient material for taking cognizance against three accused persons namely; Chetan Kumar, Dharmendra Kumar and Praveen Kumar against whom cognizance of the offences has been taken. The contention of the learned Counsel for the petitioner that non-petitioners No. 2 to 4 should have also been arrayed as accused in the case, does not have any cogent and legal basis in view of the evidence that has come on record. The order of the learned court below cannot be found fault with in this respect.

8. The contention of the learned Counsel for the petitioner being devoid of merit and substance deserves to be disallowed.

9. Consequently, the petition Under Section 482 Cr.P.C. deserves to be and is hereby dismissed.