

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20913 of 2012

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1. Pappu Yadav @ Rajesh Ranjan Yadav Sri Chandra Narayan Yadav R/V
Khurda Karweli,Ps.Kumar Khand Distt.Madhepura.

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Sri Vijay Kumar Sinha

For the Opposite Party/s : Sri Ajay Kr.Jha (App)

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

6 27-02-2015

Heard.

The grievance of the petitioner is that in absence of his production from another case, i.e., CBI Case No.12-C-98 where he was lodged in Beur Central Jail, Patna and in spite of the production warrant being issued for the production of the petitioner in the court of Judicial Magistrate, Ist Class, Purnea in connection with G.R.Case No.998 of 1987 and further without furnishing the copies of the police papers as required by Section 207 of the Cr.P.C., the Magistrate was faltering to commit the case in absence of the petitioner. The above twin questions of law which have been raised before this Court through the present petition.

Shorn off the factual details, suffice it to mention that the petitioner had been charge-sheeted for committing offences

under Sections 399 and 402 Indian Penal Code which offences are exclusively triable by the Court of Sessions.

As noted above, at the time of taking cognizance was lodged in imprisonment in the above noted CBI case and was detained in the Central Jail, Beaur, Patna. There does not appear any dispute that production warrant had been issued for the production of the petitioner before the Court of Judicial Magistrate, Ist Class in Purnea who was seized with G.R. Case No.998 of 1987. The petitioner was never produced and the order of cognizance was passed on the day prior to 22.06.1987.

The Court first wants to note that for passing an order of cognizance the production of the accused is not the *sine qua non* and order of cognizance has to be passed in view of the powers to be exercised by a Judicial Magistrate competent to take cognizance of offences under Sections 190 Cr.P.C. The Magistrate could take cognizance of an offence after perusing the petition of complaint containing the statements of facts constituting the offences or commission thereof. The Magistrate may also take cognizance of any offence after perusing the police reports of facts constituting offences. The Magistrate may also take cognizance of offence on his own information. These are the powers to be exercised by the Judicial Magistrate and that power flows from



Section 190 Cr.P.C which plainly points out that there may not be any room for hearing of any person on taking cognizance. There could be some exception to that plenary power of the Magistrate. In the case in which the police has submitted final report finding the allegations not true or reporting the case otherwise not fit for trial, then the police has the duty cast upon them to inform the result of the investigation to the informant and the Court has a duty cast upon it to issue a notice to the informant so as to affording him an opportunity of satisfying the Court that an offence had really been committed on facts constituting the offences were collected by the police but it had wrongly submitted a final report.

Here in the above situation, there was no question of informing the accused as the law does not provide that the accused should be informed by the Court who chooses to take cognizance of any offence. What is required under the law is that the Magistrate taking cognizance must apply his mind to the facts of the case and then to proceed to find out as to whether the facts placed before him through the police report were constituting an offence and if he comes to the decision that the facts did constitute an offence or offences, then the other duty cast upon the Magistrate is to find out as to who the real offenders were. As

soon as the twin duties cast upon a Magistrate as regards taking cognizance on a police report is over, the order could not be said to be suffering from any infirmity.

The grievance of the petitioner was that his production was telling seriously upon the merits of the cognizance order. This Court has already noted that the absence of the accused at the time of passing the order taking cognizance and summoning does not have any consequence upon the merits of the order, and, as such, that ground appears to be untenable.

So far as the other question that the accused was not produced at the time of commitment of the case, the Court reads Section 209 of the Cr.P.C. which is worded as under:-

209. Commitment of case to Court of Session when offence is triable exclusively by it.—When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall —

- [(a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail remand the accused to custody until such commitment has been made ;]
- (b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;
- (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence ;
- (d) notify the Public Prosecutor of the commitment of the case to the Court of Session.



The duty of the Magistrate starts on the production of the accused or on his appearance and his duty is that he should apply his judicial mind to the facts of the case only for one purpose and that is to find out as to whether any offence exclusively triable by the Court of Sessions was made out. If he finds that an offence exclusively triable by the Court of Sessions is made out, he has a duty to commit the case to the Court of Sessions for trial. But what he has to ensure is whether the police papers in compliance of provisions of Sections 207 and 208 Cr.P.C. have been made available to the accused. Assuming for the sake of argument that no compliance either Section 207 or to 208 of the Cr.P.C. has been made, then in that case, it does not have any deleterious effect on the merit of the commitment order because the compliance has to be done by the Court of Sessions, about the compliance of those particular provisions. If it has not been complied, then the Court of Sessions may furnish the copies of the documents including the statements of the witnesses which the prosecutor intends to rely or use against the accused persons during prosecution. If the accused does not appear or if he is not produced, then the court is not left with his hands fettered in committing the case. It is not dependent upon the production of the accused. If he is not produced or in case chooses not to appear,

still the case has to be committed if it appears to the Court that the offence was such which could be tried only by the Court of Sessions.

In view of whatever I have observed, the petition appears of no merit. However, the grievance of the petitioner shall be scrutinized by the Court of Sessions which could take up the present case and if finds that the copy of police papers have not been supplied to the petitioner then the Court shall ensure supply of the copies to the petitioner immediately.

With the above direction to the trial court, the petition stands dismissed. If any stay order has been granted, the same shall be stand vacated.

(Dharnidhar Jha, J)

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