

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Criminal Appeal (SJ) No.473 of 2017

Arising Out of PS.Case No. -2 Year- 2013 Thana -BEGUSARAI GRP CASE District- BEGUSARAI

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1. Nandan Sah, son of Mantu Sah  
 2. Sunita Devi @ Shobha Devi, wife of Nandan Sah  
 3. Koyali Devi, wife of Shri Sah, all resident of Village Nagdah, P.S. Mufassil,  
 District- Begusarai.

.... .... Appellant/s

Versus

1. The State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Md. Imteyaz Ahmad-Advocate

For the Respondent/s : Mr. Binod Bihari Singh-A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
**CAV JUDGMENT**

**Date: 25-05-2017**

During course of hearing submission made on behalf of appellants relating to grant of bail under the guise of Section 389(1) of the Cr.P.C., L. C. record has been gone through and finding unusual situation, has been directed to be listed for hearing on merit whereupon listed. Heard learned counsel for the appellants as well as learned Additional Public Prosecutor.

2. For better consideration of rival submission, first of all, brief facts of the case is to be noted down:-

From the record of the lower Court, it is evident that a dead body of a woman namely, Bhagwati Devi, wife of Shivrindan Sah (subsequently traced out) was found over Railway track near railway crossing no.49 and for that, Begusarai Rail P.S. U.D. Case



No.11 of 1999 (dated 19.12.1999) was registered. While the aforesaid eventuality was persisting, Complaint Case No.1408C of 1999 was filed by father of the Bhagwati Devi namely Jitendra Sah arraying altogether eight accused persons namely Nandan Sah, Shivnandan Sah, Mantun Sah, wife of Nandan Sah, Shibu Sah, wife of Shibu Sah, Suresh Sah and Naresh Sah for causing dowry death of his daughter Bhagwati Devi, who was married with accused Shivnandan Sah, son of Mantun Sah on 07.06.1998. Though, in the aforesaid complaint petition, which was filed on 22.12.1999, the allegations have been fully detailed with further disclosure that dead body was thrown near railway crossing no.49, but nothing was said about registration of U.D. Case No.11 of 1999, whereupon the learned Chief Judicial Magistrate, finding it to be within the jurisdiction of Railway Magistrate, sent the complaint to Railway Magistrate vide order dated 23.12.1999, on which date, the Railway Magistrate directed the concerned Police Station to register and investigate in accordance with Section 156(3) of the Cr.P.C., but the said order was never complied with on account of which vide order dated 22.03.2002, the order dated 23.12.1999 was recalled and the learned lower Court proceeded in accordance with Section 202 Cr.P.C. and further, concluding the same vide order dated 30.12.2004, took cognizance of an offence punishable under Section 304B, 34, 201, 498A of the I.P.C. and summoned the aforesaid eight accused persons namely



Nandan Sah, Shivnandan Sah, Mantun Sah, wife of Nandan Sah, Shibu Sah, wife of Shibu Sah, Suresh Sah and Naresh Sah to face trial.

3. It is further evident that while the aforesaid Complaint Petition was pending and being proceeded with an inquiry under Section 202 Cr.P.C., the informant Jitendra Sah gave his fard-bayan on 16.02.2003 to the same effect against the same accused disclosing the fact that as the police did not register a case over his fard-bayan at an earlier occasion, on account thereof, Complaint Case was filed, but as disclosed by his conducting lawyer that the Court had directed to register a case even then, case has not been registered and so, instant fard-bayan is being given and on the basis thereof, Rail P. S. Case No.02 of 2003 was registered against the aforesaid eight accused persons, who stood named in Complaint Case No.1408C of 1999, who have been summoned vide order dated 30.12.2004, as disclosed above.

4. It is further evident that after concluding investigation the I.O. submitted first chargesheet on 31.05.2003 against Suresh Sah, Nandan Sah, on the basis of which, cognizance was taken on 05.06.2003 keeping the investigation pending against the remaining, against whom supplementary chargesheet were submitted at two different occasions that means to say on 28.10.2003 as well as 29.02.2004 wherein Shivnandan Sah was shown to be absconder and



further, his trial was separated since thereafter. That means to say, cognizance in police case was taken prior to cognizance having taken relating to Complaint Case No.1408C of 1999. However, there happens to be no specific disclosure regarding fate of Begusarai Rail P.S. U.D. Case No.11 of 1999.

5. It is further evident that on the basis of the first chargesheet, after having cognizance taken thereupon, the case was committed to the Court of Sessions whereupon Sessions Trial No.210 of 2004 was registered while against remaining, excluding Shivnandan Sah, though supplementary chargesheet was filed at two different occasions, but proceeded conjointly and for that, Sessions Trial No.212 of 2004 was registered. It is further evident that one of the accused namely Mantun Sah died on account thereof, vide order dated 14.02.2013, his trial had abated.

6. It is further evident that after framing of charge on 05.02.2005, Sessions Trial No.212 of 2004 has been amalgamated with Sessions Trial No.210 of 2004. However, it is also apparent from the record of both the Sessions Trial though amalgamated that no format of charge is available on the record of Sessions Trial No.212 of 2004 that means to say, with regard to accused Shibu Sah, Shobha Devi @ Sunita Devi, Naresh Sah, Koyali Devi. It is the Sessions Trial No.210 of 2004, which proceeded and culminated in a manner vide judgment dated 18.01.2017 whereby and whereunder appellant



Nandan Sah, Shobha Devi @ Sunita Devi and Koyali Devi have been convicted and sentenced while Suresh Sah and Naresh Sah acquitted. Furthermore, vide order of sentence dated 20.01.2017, aforesaid three convicts have been sentenced to undergo R.I. for 10 years, each, under Section 304B I.P.C., to undergo R.I. for 3 years and fine of Rs.5,000/- each for the offence punishable under Section 498A as well as 201 of the I.P.C. respectively and in default of payment of fine, to undergo R.I. for one year additionally with a further direction to run the sentences concurrently by the learned Additional Sessions Judge-IV, Begusarai, the subject matter of instant appeal.

7. It is further evident that in Complaint Case No.1408C of 1999, after taking of cognizance vide order dated 30.12.2004, warrant of arrest non-bailable were issued and on the basis thereof, accused Suresh Sah and Mantun Sah were arrested and produced on 13.05.2005. From perusal of the said order, it is evident that a prayer was made on behalf of apprehended accused Suresh Sah and Mantun Sah that for the same occurrence, Begusarai Rail P. S. Case No.02 of 2003 has been instituted wherein they are on bail on account thereof, complaint was not maintainable in terms of Section 210(2) of the Cr.P.C. The learned lower Court had ordered to stay the proceeding of the complaint in terms of Section 210 of the Cr.P.C. and simply released both the accused but not on bail. Simultaneously, directed that all the processes issued against them as well as against other co-



accused be returned back, unexecuted. Subsequently thereof, on a petition filed on behalf of accused vide order dated 01.07.2005, without having appearance of the accused, without committing the case record of Complaint Case No.1408C of 1999, merely sent to 1<sup>st</sup> Additional Sessions Judge, Begusarai for the needful where Sessions Trial No.210 of 2004 was pending since before.

8. From perusal of the judgment impugned, although the aforesaid Complaint Petition No.1408C of 1999 was made an exhibit, of the trial, but going through the finding, it is evident that learned lower Court had not considered any event relating to Complaint Case No.1408C of 1999 though U. D. Case No.11 of 1999 was taken note of.

9. In the aforesaid background, now, the point for consideration is with regard to propriety of the judgment impugned in the background of presence of Complaint Case No.1408C of 1999.

10. In order to properly appreciate the matter in hand, first of all, **Section 210 of the Cr.P.C.**, the only Section guiding the controversy is to be taken note of and for better appreciation, the same is quoted below:-

***“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.***

***(1) When in a case instituted otherwise than on a***



*police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject- matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.*

*(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and*

*1. Subs. by Act 45 of 1978, s. 19, for cl. (a) (w. e. f. 18- 12- 1978 ).*

*the case arising out of the police report as if both the cases were instituted on a police report.*

*(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.*

11. Section 210 of the Cr.P.C. is bifurcated in three parts.



The first part speaks that whenever Magistrate gets an information regarding investigation of the case by the police for the same occurrence during conduction of inquiry or trial, shall stay the proceeding and will call for a report from the I.O. concern. Sub-section-2 suggest that whenever report in terms of Section 173 Cr.P.C. is filed by the police whereupon cognizance had already been taken for an offence against the accused, who also happens to be accused in Complaint Case that of similar allegation, then in that event, the Complaint Case is to be proceeded along with police case in the same manner as if both the cases were instituted on a police report. Sub-section-3 suggest that when police report does not carry against an accused though named in the Complaint Case or, the Magistrate does not take cognizance of an offence on a police report then, he will proceed with the inquiry or trial so stayed in terms of Sub-section-1 of Section 210 of the Cr.P.C. in accordance with the provisions of law.

12. In other words, a bare reading of the above provision makes it clear that during an inquiry or trial relating to a complaint case, if it is brought to the notice of the Magistrate that an investigation by the police is in progress in respect of the same offence, he shall stay the proceedings of the complaint case and call for the record of the police officer conducting the investigation.

13. In depth scrutiny of Section 210 speaks about its



object to fair justice, more particularly, considering Article 20(3) of the Constitution as well as Section 300 Cr.P.C., in order to prevent miscarriage of justice at the hands of accused by way of distorting merit of the case with an aid of complaint petition unseen imaginary version and its object is to

(i) it is intended to ensure that private complaints do not interfere with the course of justice;

(ii) it prevents harassment to the accused twice; and

(iii) it obviates anomalies which might arise from taking cognizance of the same offence more than once.

14. The Joint Committee of Parliament while recommending perceived unscrupulous activities in following way:-

"It has been brought to the notice of the Committee that sometimes when serious case is under investigation by the police, some of the persons file complaint and quickly get an order of acquittal either by cancellation or otherwise. Thereupon the investigation of the case becomes infructuous leading to miscarriage of justice in some cases. To avoid this, the Committee has



provided that where a complaint is filed and the Magistrate has information that the police is also investigating the same offence, the Magistrate shall stay the complaint case. If the police report (under [Section 173](#)) is received in the case, the Magistrate should try together the complaint case and the case arising out of the police report. But if no such case is received the Magistrate would be free to dispose of the complaint case. This new provision is intended to secure that private complainants do not interfere with the course of justice."

15. That being so, before [Section 210](#) can be invoked, the following conditions must be satisfied.

- (i) there must be a complaint pending for inquiry or trial;
- (ii) investigation by the police must be in progress in relation to the same offence;
- (iii) a report must have been made by the police officer under [Section 173](#); and
- (iv) the magistrate must have taken cognizance of an offence against a person who is accused in the



complaint case.

16. It is evident from the record of Complaint Case No.1408C of 1999 that same was filed before institution of the Begusarai Rail P.S. Case No.02 of 2003. It is further evident that inquiry had already commenced under Section 202 of the Cr.P.C. before institution of the police case, but cognizance which the learned lower Court took on 30.12.2004 happens to be after the cognizance having been taken by the Magistrate over the police report dated 05.06.2003. Furthermore, it is also evident from the record that till the day of cognizance in Complaint Case No.1408C of 1999, there was no information at the end of the complainant to the event that for the same occurrence during the pendency of instant complaint petition, he had also lodged a case before the police and so, on account of want of informant, there was no application of Section 210(1) of the Cr.P.C., at that relevant stage.

17. It is further evident that after taking of cognizance in Complaint Case No.1408C of 1999, processes were issued and in execution thereof, accused Suresh Sah and Mantun Sah were apprehended and produced before the Court, on whose behalf a petition was filed and on that very score, staying the proceeding in terms of Section 210 of the Cr.P.C., they were let off and further, by subsequent order dated 01.07.2005, on a prayer made by the accused,



the record was simply sent to the Court of 1<sup>st</sup> Additional Sessions Judge where Sessions Trial No.210 of 2004 was pending. The record of Complaint Case No.1408C of 1999 is available along with the record of Sessions Trial No.212 of 2004 and on account thereof, a question has arisen whether trial is vitiated on account of non-compliance of mandate of law.

18. As stated above, in the facts and circumstances of the case, Section 210(2) of the Cr.P.C. is applicable which guides the further event whereunder, it has been prescribed that if police report in terms of Section 173 of the Cr.P.C. has been submitted and accused are the same, then in that event, both the cases will run together as if, being a police case. Because of the fact that the Court has to proceed in both the cases on account thereof, the case has to be committed so that Court of Sessions should take cognizance in terms Section 193 of the Cr.P.C. and non-committal of the Complaint Case No.1408C of 1999, is not at all found in accordance with Sub-section-2 of Section 210 of the Cr.P.C.

19. Furthermore, the committal of the case in terms of Section 209 of the Cr.P.C. is to be taken up when police paper or the statement of the witnesses is furnished upon the accused as provided under Section 207 of the Cr.P.C., which could only materialize after appearance of the accused. Apart from this, when accused Suresh Sah and MantunSah were produced before the learned lower Court in



execution of warrant of arrest non-bailable on 13.05.2005, simply releasing him without granting bail as well as staying the proceeding under Section 210 of the Cr.P.C. speaks a lot, more particularly on account of non-consideration of niceties of Section 210 of the Cr.P.C. That being so, the learned lower Court had frustrated the requirement of Section 210(2) of the Cr.P.C. and the subsequent eventualities as perceived is found suffering from impropriety.

20. In ***Ramchandra Prasad and Ram Saran Sharma and another reported in 1979 B.L.J.R. 520***, it has been held:-

*9. Sri Verma contends that the order of the learned Sessions Judges directing the two cases to be tried separately violates the mandatory provisions of Section 210 (2) of the Code which in a case like the present directs that “the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report.” Section 210 of the Code runs thus:-*

*“210. [\(1\)](#) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject- matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police*



*officer conducting the investigation.*

*(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.*

*(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.*

*It is, therefore, clear that sub-section (1) directs the Magistrate to stay the inquiry or trial of a complaint case when it is made to appear to the Magistrate that an investigation by the police is in progress in relation to the offence which is the subject-matter of the enquiry or trial being held by him and imposes upon him a duty to call for a report from the police officer conducting the investigation. Sub-sections (2) and (3) lay down the course to be followed by him after the police report called for by him is received. Sub-section (2) requires him to try together the complaint case and the case arising out of the police report if a report is made by the Investigation*



*officer under Section 173 and on such report cognizance is taken by the Magistrate against any person who is accused in the complaint case. Sub-section (3) commands him to proceed with the inquiry or trial which was stayed under sub-section (1) if the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance for any offence on the police report. It is crystal clear that the course had down in sub-section (3) can be followed by him only if a Magistrate had passed an order under the sub-section staying inquiry or trial of the complaint case. The context in which sub-section (2) occurs and the use of the definite article in the complaint case, in my opinion, make it equally clear that the order under sub-section (2) can only be made in respect of the complaint case. The inquiry or trial which was stayed under sub-section (1) of Section 210. Or in other words the existence of an order under sub-section(1) staying its enquiry or trial is a condition precedent to the trial of the complaint case along with the case instituted upon the police report under the procedure prescribed by sub-section (2). In the present case, admittedly no order staying the trial or inquiry of the complaint case has been passed. The provisions of sub-section (2) of Section 210 were, therefore, not applicable.*



10. Further even if it were to be held that the procedure prescribed by sub-section (2) of Section 210 would apply even in cases in which though there has been no order staying the proceedings of the inquiry or trial the complaint case was such which ought to have been stayed under sub-section (1) of Section 210. The present case instituted upon the complaint was, in my opinion, is not such a case in which the order under Section 210 (1) could have been passed. Before an order under Section 210 (1) may be passed, the Magistrate must be satisfied that “an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him.” Though sub-section (1) does not clearly state that the stay of the proceedings shall be ordered only when an investigation is in progress in relation to all the offences which is the subject-matter of the inquiry or trial and not even in cases where the investigation by the police is in relation to some of the offences which is the subject matter of the inquiry or trial. In my opinion, the expression ‘in relation the offence which is the subject-matter of the inquiry or trial, construed in accordance with the aims and object of the provision means in relation to the offence or to all the offences which are the subject-matter of the inquiry or trial. The expression used is in relation to



*the offence and not in relation to any one of the offences. The expression 'the offence indicates that the offence which is the subject-matter of the inquiry or trial and the offence which is the subject-matter of the investigation' should be identical. They are not identical if an investigation relates to only one offence while the inquiry or trial relates to two or more offences. The plain literal meaning of the words used, therefore, support the construction that the expression 'the offence means the offence or all the offences and not the offence or any of the offence.' A consideration of the aims and objects of the provision points to the same conclusion. The object underlying Section 210 is that when the offences in the complaint case and the police case are identical, the identical offences should be tried together in course of one proceeding as otherwise there would be unnecessarily multiplicity or proceedings. If only one offence is the subject-matter of the investigation of the police and two or more offences are alleged in the complaint case, the offences are not identical and different proceedings are not unnecessary, fresh facts will have to be inquired into if a trial or inquiry into an additional evidence has to take place. If the construction that the expression "the offence means the offence or any of the offences" were to be adopted it would clearly*



*result in injustice for a complainant would be deprived of his right to prosecute an offender for the offence and he would go unpunished because there is no police investigation in respect of that offence. It is, therefore, manifest that only if the police investigation is in respect of all the offences which are being inquired into or tried by the Magistrate in a case instituted upon a complaint that the Magistrate is required by sub-section (1) to stay the proceeding in the case instituted upon a complaint. In the present case offences under Section 504 and 506 were also alleged against one of the accused, namely, the Block Development Officer. There offences was clearly not the subject-matter of investigation by the police. Therefore, the case instituted upon the complaint was not liable to be stayed under sub-section (1). Even if the contention of the learned Advocate for the petitioner that the expression 'any person who is accused in a complaint case means even one person who is accused in the complaint case is accepted, a point on which I express no opinion, there has been therefore, no contravention of the provisions of sub-section (2) of Section 210 of the Code by the learned Sessions Judge in passing the impugned order."*

21. In ***Pal alias Palla vs. State of Uttar Pradesh*** reported in (2010) 10 SCC 123, wherein the facts of the case happens



to be quite different from the facts of the present case as in the former, police case as well as complaint case though relating to same occurrence divulges different accused, as witness of one case has been arrayed as an accused in another case, but ambit and scope of Section 210 has been dealt with and for better appreciation, the same is quoted below:-

*“26. Section 210 Cr.P.C. provides the procedure to be followed when there is a complaint case and police investigation in respect of the same offence. Sub-Section (1) of Section 210 provides that when in a case instituted otherwise than on a police report, namely, a complaint case, the Magistrate is informed during the course of inquiry or trial that an investigation by the police is in progress in relation to the offence which is the subject matter of inquiry or trial held by him, the Magistrate is required to stay the proceedings of such inquiry or trial and to call for a report on the matter from the Police Officer conducting the investigation.*

*27. Sub-Section (2) of Section 210 provides that if a report is made by the Investigating Officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person, who is an accused in a complaint case, the Magistrate shall inquire into or try the two cases*



*together, as if both the cases had been instituted on a police report. Sub-Section (3) provides that if the police report does not relate to any accused in the complaint case, or if the Magistrate does not take cognizance of any offence on a police report, he shall proceed with the inquiry or trial which was stayed by him, in accordance with the provisions of the Code.*

*28. Although, it will appear from the above that under Section 210 Cr.P.C. the Magistrate may try the two cases arising out of a police report and a private complaint together, the same, in our view, contemplates a situation where having taken cognizance of an offence in respect of an accused in a complaint case, in a separate police investigation such a person is again made an accused, then the Magistrate may inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. That, however, is not the fact situation in the instant case, since the accused are different in the two separate proceedings and the situation has, in fact, arisen where prejudice in all possibility is likely to be caused in a single trial where a person is both an accused and a witness in view of the two separate proceedings out of which*



*the trial arises.*

22. In ***Dilawar Singh vs. State of Delhi*** reported in (2007) 12 SCC 641, wherein for an occurrence committed on 08.08.1984, on 09.08.1984, written complaint was made before the Prime Minister as well as respective police officials, but to no avail and then thereafter, a complaint was filed on 31.08.1984, wherein the aim and ambit of Section 210 of the Cr.P.C. has been highlighted in following way:-

*“13. The principle has been statutorily recognised in [Section 210](#) of the Cr.P.C. which enjoins upon the Magistrate, when it is made to appear before him either during the inquiry or the trial of a complaint, that a complaint before the police is pending investigation in the same matter, he is to stop the proceeding in the complaint case and is to call for a report from the police. After the report is received from the police, he is to take up the matter together and if cognizance has been taken on the police report, he is to try the complaint case along with the G.R. Case as if both the cases are instituted upon police report. The aim of the provision is to safeguard the interest of the accused from unnecessary harassment.*

*14. The provisions of [Section 210](#), Cr.P.C, are mandatory in nature. It may be true that non-*



*compliance with the provisions of Section 210, Cr.P.C., is not ipso facto fatal to the prosecution because of the provision of Section 465 Cr. P.C., unless error, omission or irregularity has also caused the failure of justice and in determining the fact whether there is a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. But even applying the very same principles it is seen that in fact the appellant was in fact prejudiced because of the non-production of the records from the police.”*

23. As indicated above, the object of introducing Section 210 of the Cr.P.C. happens to be under the garb of Article 20(3) of the Constitution of India, which has also been followed under the code by way of introduction of Section 300 of the Cr.P.C. whereby and whereunder accused has been saved to face double jeopardy. Certainly, if the complaint petition as well as police case launched for same occurrence against the same accused is allowed to proceed independently, then in that event, there would be flagrant violation of the mandate of the law, because of the fact that for the same occurrence, the accused has to suffer the rigour of trial twice as for which he is found tried with ultimate result may be, by way of conviction or acquittal. The aforesaid event will also frustrate the



scope of Section 223 of the Cr.P.C. whereunder, apart from other persons, accused of the offence committed in the course of the same transaction are to be charged conjointly. For better appreciation, **Section 223 of the Cr.P.C.** is quoted below:-

*“223. What persons may be charged jointly. The following persons may be charged and tried together, namely:-*

*(a) persons accused of the same offence committed in the course same transaction;*

*(b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence;*

*(c) person accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;*

*(d) persons accused of different offences committed in the course of the same transaction;*

*(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last-*



*named offence;*

*(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860 ), or either of those sections in respect of stolen property the possession of which has been transferred by one offence;*

*(g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges: Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.*

24. That being so, the Section 210(2) of the Cr.P.C. in consonance with the judicial pronouncement as referred hereinabove coupled with Section 223 of the Cr.P.C. may be considered as an affirmation relating to conjoint trial or by way of clubbing in terms of Section 223 of the Cr.P.C.



25. Now, coming to facts of the case, as stated above, while the Complaint Case No.1408C of 1999 was filed, no police case was there, while inquiry under Section 202 Cr.P.C. was going on, after examination of the some of the witnesses, the police case was filed and it is evident that before taking of cognizance vide order dated 30.04.2004 relating to Complaint Case No.1408C of 1999, cognizance relating to Begusarai Rail P.S. Case No.02 of 2003 had already been taken. Though, in both the cases, the cognizance of an offence against the accused was already taken and further, at that very moment, on account of paucity of information, no steps in terms of Section 210 of the Cr.P.C. was taken up, but the subsequent eventualities would not nullify or erase the legality of the order of the cognizance having taken in connection with Complaint Case No.1408C of 1999. Furthermore, till then, the police case had already committed to the Court of Sessions and in the aforesaid background, for proper application of Section 210(2) of the Cr.P.C., the Complaint Case No.1408C of 1999 would have been committed to the Court of Sessions, which could not be on account of absence of accused. Furthermore, once two of the accused persons, in execution of warrant of arrest non-bailable was already apprehended and produced before the Court relating to Complaint Case No.1408C of 1999, then in that event, the learned lower Court was not at all legally permitted to release the accused at one end and at the other staying the proceeding



in terms of Section 210 of the Cr.P.C., till appearance was completed. In likewise manner, vide order dated 01.07.2005 whereby the learned lower Court had simply directed the complaint case to be placed before the Competent Sessions Court where the police case was pending was also illegal in the background of the fact that neither it was in terms of Section 209 Cr.P.C. nor Section 323 Cr.P.C. and virtually by such action made the Court of Sessions crippled as in the background of aforesaid deficiency, the Sessions Court was not at all competent enough to exercise his jurisdiction in terms of Section 193 Cr.P.C. Furthermore, by such activity, the learned Chief Judicial Magistrate had frustrated application of Section 210(2) of the Cr.P.C.

26. Not only this, when the record of Complaint Case No.1408C of 1999 came up before the Court of Sessions, learned Court of Sessions should have gone through the same and further, would have directed the learned lower Court to commit the case in presence of the accused in order to have proper application of Section 210(2) of the Cr.P.C. otherwise having the order of cognizance for an offence punishable under Sections 304B, 498A, 201, 34 of I.P.C., the Complaint Case No.1408C of 1999 remained alive and will be alive till its conclusion by sailing with trial and on account thereof, apart from frustration of proper application of Section 210(2) of the Cr.P.C., the status of complaint case has been allowed to hang over under uncertainty. Furthermore, due to lapses having at the part of



learned lower Court, a glaring event of miscarriage of justice has been found. Therefore, after perceiving the events, as stated above, it is evident that the impugned judgment of conviction and sentence would not survive. Consequent thereupon, is set aside. Appeal is allowed. Matter is remitted back to the learned lower Court to proceed in accordance with law in the background of the finding so made hereinabove. Appellants are under custody, hence are directed to be produced before the learned lower Court, who will in due course of time consider the prayer of the appellants relating to grant of bail.

27. It is made clear that on account of illegality having committed by the learned lower Court during course of conduction of the trial, the same has been discussed without touching merit of the case.

(Aditya Kumar Trivedi, J)

Vikash/-

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