

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.9803 of 2018**

Arising Out of PS. Case No.-286 Year-2015 Thana- MASAURHI District- Patna

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1. Binod Agrawal, S/o Late Shree Nagarmal,
  2. Poonam Devi @ Poonam Agrawal W/o Shree Binod Agrwal,
  3. Nikhil Agrawal @ Kanchha, S/o Shree Binod Agrwal,  
All R/o Village/Mohalla- Ramanujganj, P.S.- Ramanujganj,  
District- Balrampur (Chatisgarh).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Binod Kumar Dalmian, S/o Late Shree Narain Prasad Dalmian, R/o Village-  
Tarengana-Gola, P.O. & P.S.- Masaurhi, District- Patna.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Anjani Kumar Sinha No-1  
For the Opposite Party/s : Mr. Smt Sangeeta Sharma

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

2      04-09-2018                      Heard learned counsel for the petitioners, learned  
counsel representing the State and learned counsel representing  
O. P. No. 2 who has entered appearance on his own.

It appears that vide order dated 12.09.2017 the learned  
S.D.J.M., Masaurhi while differing with the Police report took  
cognizance of the offence under Sections 363 and 365 of the  
Indian Penal Code in Masaurhi P. S. Case No. 286 of 2015 and  
directed issuance of summons against the petitioners.

Learned counsel for the petitioners has taken this  
Court through the order dated 12.09.2017 passed by the learned  
S.D.J.M., Masaurhi and submits that in fact no material has  
been referred even for a prima facie view in the order dated



12.09.2017 which could have prevailed upon the learned S.D.J.M. to differ with the Police report and issue summons to the petitioners.

Learned counsel representing the State as well as the opposite party no. 2 are unable to demonstrate from the impugned order that any material has been referred by the learned S.D.J.M., Masaurhi which could have indicated a prima facie case against these petitioners.

In the aforesaid view of the matter, the impugned order dated 12.09.2017 is required to be set aside and is accordingly set aside by this Court. Since order taking cognizance dated 12.09.2017 is being set aside for the reason that it does not contain even prima facie reference of the materials on the basis of which learned S.D.J.M. has passed the order, it will be open for the learned S.D.J.M. to take a fresh view of the matter and pass a reasoned order indicating the materials which would prima facie indicate that there are sufficient grounds to proceed against these petitioners. In absence of their being sufficient grounds, there cannot be an order of summoning.

Let an appropriate order be passed by the learned S.D.J.M., Masaurhi in the facts of the case on the basis of the



materials available on the record within a period of 30 days  
from the date of receipt/production of a copy of this order.

This application is disposed of.

**(Rajeev Ranjan Prasad, J)**

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