

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.3872 of 2017**

Arising Out of PS. Case No.-652 Year-2007 Thana- COMPLAINT CASE District- Supaul

Mahendra Sah Son of Late Sundra Sah, Resident of Village- Dubiyahi Gauth,  
P.S.- Pipara, District- Supaul, Bihar.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Rameshwar Sah, Son of Late Chhutaharau Sah, Resident of Village Dubiyahi Gauth, P.S. Pipara, District- Supaul.

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Anant Kumar-1, Adv

For the Opposite Party/s : Mr. Khurshid Anwar, APP

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
**ORAL ORDER**

2      26-04-2019                      Heard learned counsel for the petitioner as well as  
learned APP.

2. For the same occurrence, informant Rameshwar Sah had approached the police firstly, whereupon Pipra PS Case No. 41/2007 has been instituted, though belatedly, against the four accused, namely, Sahdeo Sah, Birendra Sah, Mahendra Sah and Rajendra Sah. Perceiving vulpine conduct of the police official, the aforesaid Rameshwar Sah filed complaint petition no. 652/2007 against Rajendra Sah, Bindeshwari Sah, Mahendra Sah, Raman Sah, Birendra Sah, Sahdeo Sah and Subhash Sah. It is needless to say that both the cases are running on the Board of the different courts. It is also evident that at the trial stage, there



was no prayer at either end acknowledging the relevant fact. It is further evident that prayer though, not happily worded has been made before the learned lower court, before the Sessions Judge under Cr. Misc. No. 92/2016 at the end of one of the accused and rejection thereof, is the subject matter of instant petition.

3. From perusal of the FIR as well as Complaint Petition, it is evident that Sahdeo Sah, Birendra Sah, Mahendra Sah and Rajendra Sah are common in both apart from the fact that both the prosecution bore same version having variance with regard to number of the accused, only.

4. Such situation is found properly cared under Section 210 CrPC 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 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.

5. Instead of giving sermon to the learned lower court, it is expected at the end of learned lower court that it will see proper application of Section 210 of the CrPC and in terms thereof, the instant petition is disposed of.

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**(Aditya Kumar Trivedi, J)**

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