

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18616 of 2018

Arising Out of PS. Case No.-321 Year-2011 Thana- MADHUBANI COMPLAINT CASE
District- Madhubani

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1. Amit Kumar Jha @ Aamit Kumar, Son of Sri Dilip Kr. Jha
 2. Dilip Kumar Jha @ Dilip Kumar Son of late Baidya Nath Jha Both Resident of Village Harna, P.S. Rudrapur, District- Madhubani.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sitaraman Jha, Son of late Indra Narain Jha Resident of Village Harna, P.S. Rudrapur, District Madhubani.

... .. Opposite Party/s

Appearance :

For the Petitioners : Mr. Ajay Thakur, Advocate.
Ms. Babita Kumari, Advocate.
For the Opposite Parties : Mr. Mritunjay Kumar Nirala, APP.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 06-02-2019

Heard learned counsel for the petitioners and the State.

2. The petitioners have challenged the order dated 12.02.2018 whereby the learned trial court has rejected the prayer for the petitioners for their cases to be sent back to the committing court for the purposes of compliance of the provisions of Section 207, 208 and 299 of the Code of Criminal Procedure.

3. From the records, it appears that out of the four accused persons, two were represented through their counsel. The petitioners were not present nor were they represented through any legal practitioner at the time when the order of commitment was passed.



4. Mr. Ajay Thakur, learned counsel for the petitioners while assailing the order has submitted that the provision of Section 299 Cr.P.C. enjoins upon a committing Magistrate to, in the absence of an accused person, record the evidence of the witnesses and then remit/commit the case to the Sessions court if the case is required to be tried by the court of Sessions.

5. This not having been done, the only option for the trial court was to send back the case of the petitioners to the committing court for compliance of Section 207, 208 as well as 299 of the Code of Criminal Procedure.

6. The aforesaid proposition suggested by Mr. Thakur, learned advocate though on face of it appears to be correct because without the service of police papers, no person would not be able to effectively defend his case at the trial.

7. Nonetheless in the absence of the accused persons and, in the present case, the petitioners, against whom the processes were issued for declaring them absconders and in the event of other accused persons having been represented and their case having been transmitted to the court of Sessions, the requirement of the procedural aspects of the case would be satisfied if the petitioners/accused persons appear before the trial court and they be served with a copy of the police papers.



8. In the case of Gagan Thakur v. State of Jharkhand and Others reported in 2004 CRI L.J. 1910 the Hon'ble Supreme Court has categorically held in para 6 and 10 as follows:

6. *Section 209, Cr.P.C. does not envisage splitting of cases of absconders and appearing-accused. The splitting is thus a practical solution to ensure speedy trial of the appearing-accused. Section 209(c) provides for sending the records of the case and other document and even material exhibits. If with the commitment of a single accused, these things are to be sent up to Sessions Court, then the committing Magistrate is legally left with no case record or document or exhibit. Section 209 (d) read with Form 31 clearly directs that the Public Prosecutor is to conduct the case. This does not state "case of appearing-accused".*

10. *It has already been stated above that in the event of commitment of one accused, the other absconding-accused can use the prosecution paper during trial, so the only care to be taken is that at the time of facing trial whenever do they appear, the prosecution papers are made available to them and this can be done by attaching these papers with the record sent to the Sessions Court for their being supplied as and when the absconders do appear.*



9. The challenge of the petitioners therefore against the order dated 12.02.2018 cannot be sustained.

10. The petition is dismissed.

12. However, it is made clear that the trial court shall make available the petitioners the police papers on which the prosecution seeks to rest its case.

13. The petition is, accordingly, disposed off.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
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