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**(2007) 12 PAT CK 0061**

**Patna High Court**

**Case No:** Criminal Miscellaneous No. 19925 of 2007

Jamahir Mahto

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

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**Date of Decision:** Dec. 14, 2007

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 209, 311, 323

**Citation:** (2008) 1 PLJR 273

**Hon'ble Judges:** Abhijit Sinha, J

**Bench:** Single Bench

**Advocate:** B.N. Sinha "Suman" and Lalit Kumar Singh, for the Appellant; Jharkhandi Upadhyay for the State and None for the O.P. No. 2, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Abhijit Sinha, J.

Jamahir Mahto, the informant of Bibhutipur P.S. Case No. 91 of 2003 (Sessions Trial No. 284 of 2006) and one of the accused of Complaint Case No. CR. 455 of 2003 is aggrieved by the order dated 25.8.2006 passed by Sri Birendra Kumar, learned. Sessions Judge, Samastipur, in Cr. Misc. No. 105 of 2006 whereby he has been pleased to recall the Complaint Case pending in the Court of Sri B.K. Srivastava, Judicial Magistrate, First Class, Rosera, and the Sessions Trial pending before the learned Presiding Judge, Fast Track Court No. I, Samastipur, and transferred them to the Court of the Additional Sessions Judge, Rosera, for disposal as both the cases were counter to each other as also the date and place of occurrence in both the cases were the same. The said Cr. Misc. Case had been preferred by the complainant party of the complaint case. Assailing the impugned order the learned counsel for the petitioner sought to submit that in the facts and circumstances as was existing, the order was both uncalled for and unwarranted due regard being had to the facts

that whereas in the Complaint Case the statement of the accused u/s 311 Cr. P.C. had already been recorded, in the Sessions Trial even charge has not been framed and clubbing two cases together for disposal would only lead to an unnecessary delay in the disposal of the Complaint Case. It was further contended that the complainant party of the Complaint Case had purposely preferred the Cr. Misc. Petition only to delay the disposal of the Complaint Case with the sole motive of causing harassment to the accused party as that case would also have to be kept pending till completion of the procedural formalities of the Sessions Case. It was also contended that the learned Sessions Judge before passing the impugned order ought to have taken into consideration the different stages of pendency of both the cases.

2. It is worth notice that although O.P. No. 2 in pursuance of the notice issued did put in an appearance by filing vakalatnama but during the hearing neither O.P. No. 2 nor his accredited counsel was present in court.

3. It is a salutary practice that when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. The Apex Court has given its approval to the said practice in *Nathilal v. State of U. P.* and has also delineated in the same judgment the procedure to be followed in such a situation. Then again in the case of [Sudhir and Others etc. Vs. State of M.P. etc.](#), the Apex Court has explained the practical reasons for adopting a procedure that such cross cases shall be tried by the same court and has summarized the same thus "(1) It staves off the danger of an accused being convicted before his whole case is before the court; (2) It deters conflicting judgments being delivered upon similar facts; and (3) In reality the case and the counter case are, to all intents and purposes, different or conflicting versions of one incident."

4. However, one cannot be oblivious of a difficulty that may arise in such a situation inasmuch as whereas one case is triable exclusively by the Sessions Court, the other or the counter case is triable by a Magistrate, which is the position in the present case. This question has been considered and answered by the Apex Court in *Sudhir vs. State of Madhya Pradesh* (supra) in paragraphs 12 and 13 which are quoted herein below:--

"12. How to implement the said scheme in a situation where one of the two cases (relating to the same incident) is charge-sheeted or complained of, involves offences or offence exclusively triable by a Court of Sessions, but none of the offences involved in the other case is exclusively triable by the Sessions Court. The Magistrate before whom the former case reaches has no scope from committing the case to the Sessions Court as provided in Section 209 of the Code. Once the said case is committed to the Sessions Court, thereafter it is governed by the provisions subsumed in Chapter XVIII of the Code. Though the next case cannot be committed in accordance with Section 209 of the Code, the Magistrate has, nevertheless, power

to commit the case to the Court of Sessions, albeit none of the offences involved therein is exclusively triable by the Sessions Court. Section 323 is incorporated in the Code to meet similar cases also. That section reads thus:--

"If, in any inquiry into an offence or a trial before a Magistrate it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made."

"13. The above section does not make an inroad into Section 209 because the former is intended to cover cases to which Section 209 does not apply. When a Magistrate has committed a case on account of his legislative compulsion by Section 209, it cross case, having no offence exclusively triable by the Sessions Court, must appear to the Magistrate as one which ought to be tried by the same Court of Sessions. We have already adverted to the sturdy reasons why it should be so. Hence the Magistrate can exercise the special power conferred on him by virtue of Section 323 of the Code when he commits the cross case also the Court of Sessions. Commitment under Sections 209 and 323 might be through two different channels, but once they are committed their subsequent flow could only be through the stream channelised by the provisions contained in Chapter XVIII."

Due regard being had to the facts and the circumstances of the case, no interference with the impugned order is called for in view of the law laid down by the Apex Court. It would only be in the interest of justice that both cases are tried together before the same Court. The application is accordingly dismissed.