# IN THE HIGH COURT OF JUDICATURE AT PATNA
## CRIMINAL MISCELLANEOUS No.53947 of 2015

Arising Out of PS. Case No.-175 Year-2013 Thana- BIHTA District- Patna

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1. Ram Agya Singh @ Ram Adya Singh, S/o late Deo Lal Singh R/o Village- Nathupur, P.S.- Bihta, District -Patna.
2. Nanda Yadav@Nand Kishore Yadav, S/o Jagdish Yadav
3. Jagdish Yadav S/o Bali Yadav; petitioner No. 2 and 3 are R/o Villge- Doghara tola, Chhilka par, P.S.- Bihta, District- Patna.

... ... Petitioner/s

Versus

1. State of Bihar
2. Ram Pravesh Yadav, S/o late Chandrajeet Yadav, R/o Villge- Doghara Ka Tola, Chhilka Par, P.S.- Bihta, District Patna.

... ... Opposite Party/s

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with

## CRIMINAL MISCELLANEOUS No. 55695 of 2015

Arising Out of PS. Case No.-175 Year-2013 Thana- BIHTA District- Patna

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1. Sidheshwar Prasad @ Bauanand @ Baunand Yadav, S/o Bali Yadav, R/o Village- Doghara Tola, Chhilka Par, P.S.- Bihta, District- Patna.
2. Gudu Kumar @ Guddu Yadav @ Guddu Raj, S/o Munilal Yadav, R/o Village -Yogipur, P.S.- Bihta, District- Patna.

... ... Petitioner/s

Versus

1. State of Bihar
2. Ram Pravesh Yadav, S/o Late Chandrajeet Yadav, R/o Village- Doghra Ka Tola, Chhilka Par, P.O.- Doghra, P.S.- Bihta, District- Patna.

... ... Opposite Party/s

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**Appearance :**

(In CRIMINAL MISCELLANEOUS No. 53947 of 2015)

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| For the Petitioner/s | : | Mr. Sanjay Kumar, Adv. |
| For the State | : | Mr. Binod Kumar, No. 3, APP |
| For the O.P. No.2 | : | Mr. Rajendra Narain, Sr. Adv.<br>Mr. Anil Kumar, Adv. |

(In CRIMINAL MISCELLANEOUS No. 55695 of 2015)

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| For the Petitioner/s | : | Mr. Sanjay Kumar, Adv. |
| For the State | : | Mr. Ram Sumiran Roy, APP |
| For the O.P. No.2 | : | Mr. Rajendra Narain, Sr. Adv.<br>Mr. Anil Kumar, Adv. |

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**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH**

**CAV JUDGMENT**

**Date : 13-02-2025**

Heard Mr. Sanjay Kumar, learned counsel appearing for the petitioners, Mr. Binod Kumar No. 3 and Mr. Ram Sumiran Roy, learned APPs appearing for the State in Cr. Misc. No. 53947/2015 and Cr. Misc. No. 55695/2015 respectively and Mr. Rajendra Narain, learned senior counsel appearing for the O.P. No. 2 in both the petitions.

**2.** Both the petitions have been filed under section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') with a prayer to quash the order dated 07.10.2015 passed by learned Additional Chief Judicial Magistrate, Danapur, in connection with Bihta P.S. Case No. 175/2013 (G.R. No. 969/2013), whereby and whereunder the learned Magistrate has taken cognizance of the offences under sections 302 and 201/34 of IPC against the petitioners and others. The petitioner, namely, Ram Agya Singh @ Ram Adya Singh (petitioner No. 1 of Cr. Misc. No. 53947/2015) died after filing his petition and by order dated 16.05.2024, the criminal Miscellaneous No. 53947 of 2015 was directed to run in respect of the rest petitioners only.

**3.** Mr. Sanjay Kumar, learned counsel for the petitioners submits that the informant's youngest son, namely, Arvind Kumar, aged about 16 years, who used to load sand in

the trucks with the help of JCB machine died due to an accident. When he was doing his labour work, the bucket of the JCB machines hit him on his head and consequently, he died and due to fear, JCB operators and munshi of sand ghat (Balu ghat) disposed of his body on the bank of Sone river and there were two JCB operators, one munshi, four other persons including the petitioners and three other persons of Doghara Tola village at Balu Ghat when the alleged occurrence of accident took place. Admittedly, the informant is not an eyewitness of the occurrence and according to him when he reached at the Balu Ghat, he did not find his son and at that time, JCB machines were also not working and he suspected that his son had been killed by the petitioners and others after hatching a conspiracy and the dead body had been disappeared by them and accordingly, the case was lodged mainly on the basis of suspicion. During investigation, no one claimed to have seen the occurrence as alleged by the informant and the investigating officer apprehended the JCB machine operators, namely, Dadan Choudhary, and Guddu Kumar (petitioner No.2 of Cr. Misc. No. 55695/2015) and got their statements recorded and came to know that the informant’s son died of an accident happened due to JCB bucket’s hitting to the head of the deceased and

thereafter, the investigating officer made his best effort with the help of dog squad to trace out the dead body or his remains but on account of devastating flood in Sone river, the dead body could not have been found out and it was presumed that the dead body might have been swift away in the flood. It is further submitted that the informant filed Cr.WJC No. 70/2014 in the form of habeas corpus for the latches of the police official in tracing out the victim or his body then at the direction given by this Court in said Cr.WJC, the Polygraphy Test of JCB operator and munshi was done and even then the factum of accidental death of informant's son came out only and after the investigation, the concerned police officer submitted chargesheet under sections 304A, 287, 281 and 120B of IPC only against three named accused persons including the petitioner Guddu Kumar and the investigation was kept pending in respect of the petitioners, Ram Agya Singh @ Ram Adya Singh (now deceased petitioner), Nanda Yadav @ Nand Kishore Yadav, Jagdish Yadav and Sidheshwar Prasad @ Baunand Yadav. At the time of taking cognizance, the learned Magistrate did not take into consideration the fact that in respect of all the petitioners except the petitioner Guddu Kumar, there was no police report either in the form of chargesheet or final report and

the cognizance was taken despite the investigation in respect of them being pending before the police, though the informant had filed a protest petition but upon that, the Magistrate did not proceed. Learned counsel has placed reliance upon the judgment of the Hon'ble Apex Court passed in the case of ***Abhinandan Jha & Ors. vs. Dinesh Mishra*** reported in **AIR 1968 SC 117** and the paragraph Nos, 16, 17, 20 and 21 upon which reliance has been placed are being reproduced as under : -

> ***"16.*** *In this connection, the provisions of Section 169 of the Code, are relevant. They specifically provide that even though, on investigation, a police officer, or other investigating officer, is of the opinion that there is no case for proceeding against the accused, he is bound, while releasing the accused, to take a bond from him to appear, if and when required, before a Magistrate. This provision is obviously to meet a contingency of the Magistrate, when he considers the report of the investigating officer, and judicially takes a view different from the police.*
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> ***17.*** *We have to approach the question, arising for consideration in this case, in the light of the circumstances pointed out above. We have already referred to the scheme of Chapter XIV, as well as the observations of this Court in Rishbud and Inder Singh case [(1955) 1 SCR 1150] that the formation of the opinion as to whether or not there is a case to place the accused on trial before a Magistrate, is left to the officer in-charge of the police station. There is no express power, so far as we can see, which gives jurisdiction to pass an order of the nature under attack nor can any such powers be implied. There is*

*certainly no obligation, on the Magistrate, to accept the report, if he does not agree with the opinion formed by the police. Under those circumstances, if he still suspects that an offence has been committed, he is entitled, notwithstanding the opinion of the police, to take cognizance, under Section 190(1)(c) of the Code. That provision, in our opinion, is obviously intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or the police, either wantonly or through bona fide error, fail to submit a report, setting out the facts constituting the offence. Therefore, a very wide power is conferred on the Magistrate to take cognizance of an offence, not only when he receives information about the commission of an offence from a third person, but also where he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, under Section 190(1)(c), on the ground that, after having due regard to the final report and the police records placed before him, he has reason to suspect that an offence has been committed. Therefore, these circumstances will also clearly negative the power of a Magistrate to call for a charge-sheet from the police, when they have submitted a final report. The entire scheme of Chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the officer in-charge of the police station and that opinion determines whether the report is to be under Section 170, being a 'charge-sheet', or under Section 169, 'a final report'. It is no doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police and, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge-sheet, because, the submission of the*

*report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion, on the investigation, and to submit a report, according to such opinion. Thai will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report either under Section 169, or under Section 170, depending upon the nature of the decision. Such a function has been left to the police under the Code.*

***20.*** *Therefore, to conclude, there is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial.*

***21.*** *In these two appeals, one other fact will have to be taken note of. It is not very clear as to whether the Magistrate, in each of these cases, has chosen to treat the protest petitions, filed by the respective respondents, as complaints, because, we do not find that the Magistrate has adopted the suitable procedure indicated in the Code, when he takes cognizance of an offence, on a complaint made to him. Therefore, while holding that the orders of the Magistrate, in each of these cases, directing the police to file charge-sheets, is without jurisdiction, we make it clear that it is open to the Magistrate to treat the respective protest petitions, as complaints, and take further proceedings, according to law, and, in the light of the views expressed by us, in this judgment."*

**4.** On the other hand, learned senior counsel appearing for the O.P. No. 2 has vehemently opposed these petitions and submits that the trial of the petitioners has started

and after framing of charges upon them, two prosecution witnesses have been examined, so, in such a situation, the petitions have become infructuous. He further submits that there is ample evidence against the petitioners in the case diary to proceed with the alleged offences of murder and disappearing the dead body of the deceased (informant's son). The investigating officer and other police officials did not conduct the investigation in proper manner, so, the informant had to file Cr.WJC No. 70/2014 in which several directions were issued and only then, further investigation was done but even then, the dead body of the deceased could not have been recovered. During investigation, the accused persons including the petitioners were found absconding and their conduct remained suspicious completely. The learned Magistrate did not make an error in taking cognizance against whom the investigation was kept pending at that time, as it is a settled law that on the basis of partial chargesheet, a Magistrate can take cognizance of the offences and summon the accused against whom there is sufficient material. In support of these submissions, learned senior counsel has placed reliance upon the three judgments of the Hon'ble Apex Court passed in following cases : -

(i) **Nahar Singh vs. State of Uttar Pradesh &**

**Another** reported in **2022 (5) SCC 295.** The relevant paragraph Nos. '29' and '30' upon which reliance has been placed are being reproduced as under : -

> ***"29.*** *In Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] , SWIL Ltd. [SWIL Ltd. v. State of Delhi, (2001) 6 SCC 670 : 2001 SCC (Cri) 1205] and Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] , the power or jurisdiction of the court or Magistrate taking cognizance of an offence on the basis of a police report to summon an accused not named in the police report, before commitment has been analysed. The uniform view on this point, irrespective of the fact as to whether cognizance is taken by the Magistrate under Section 190 of the Code or jurisdiction exercised by the Court of Session under Section 193 thereof is that the aforesaid judicial authorities would not have to wait till the case reaches the stage when jurisdiction under Section 319 of the Code is capable of being exercised for summoning a person as accused but not named as such in police report. We have already expressed our opinion that such jurisdiction to issue summons can be exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in Column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Session in summoning an accused upon taking cognizance, whose name may not feature in the FIR or police report.*
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> ***30.*** *In the present case, the name of the accused had transpired from the statement made by the victim under Section 164 of the Code. In Dharam Pal*

*[Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] , it has been laid down in clear terms that in the event the Magistrate disagrees with the police report, he may act on the basis of a protest petition that may be filed and commit the case to the Court of Session. This power of the Magistrate is not exercisable only in respect of persons whose names appear in Column (2) of the charge-sheet, apart from those who are arraigned as accused in the police report. In the subject proceeding, the Magistrate acted on the basis of an independent application filed by the de facto complainant. If there are materials before the Magistrate showing complicity of persons other than those arraigned as accused or named in Column (2) of the police report in commission of an offence, the Magistrate at that stage could summon such persons as well upon taking cognizance of the offence. As we have already discussed, this was the view of this Court in Raghubans Dubey [Raghubans Dubey v. State of Bihar, (1967) 2 SCR 423 : AIR 1967 SC 1167] . Though this judgment dealt with the provisions of the 1898 Code, this authority was followed in Kishun Singh [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] . For summoning persons upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police some other persons are involved in the offence. These materials need not remain confined to the police report, charge-sheet or the FIR. A statement made under Section 164 of the Code could also be considered for such purpose.***"***

(ii) **State of Gujarat vs. Afroz Mohammed Hasanfatta** reported in **AIR 2019 SC 2499.** The relevant paragraph Nos. 15, 22 and 51 upon which reliance has been

placed are being reproduced as under : -

> ***"15.*** *It is well-settled that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and the Magistrate is only to be satisfied that there are sufficient grounds for proceeding against the accused. It is fairly well-settled that when issuing summons, the Magistrate need not explicitly state the reasons for his satisfaction that there are sufficient grounds for proceeding against the accused. Reliance was placed upon Bhushan Kumar and another v. State (NCT of Delhi) and another, (2012) 5 SCC 424 : (AIR 2012 SC 1747, Paras 7, 9 and 10) wherein it was held as under :*
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> *"11. In Chief Enforcement Officer v. Videocon International Ltd. [Chief Enforcement Officer v. Videocon International Ltd., (2008) 2 SCC 492 : (SCC p. 499, para 19) : (AIR 2008 SC 1213 at P.1216, Para 12) the expression "cognizance" was explained by this Court as "it merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the*

*trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.*

*12. A "summons" is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.*

*13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued."*

***22.*** *Insofar as taking cognizance based on the police report, the Magistrate has the advantage of the charge sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are*

*sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) CrPC, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file. In the present case, cognizance of the offence has been taken by taking into consideration the charge-sheet filed by the police for the offence under Sections 420, 465, 467, 468, 471, 477-A and 120-B IPC, the order for issuance of process without explicitly recording reasons for its satisfaction for issue of process does not suffer from any illegality.*

***51.*** *In our view, the learned Single Judge ought not to have gone into the merits of the matter when the matter is in nascent stage. When the prosecution relies upon the materials, strict standard of proof is not to be applied at the*

*stage of issuance of summons nor to examine the probable defence which the accused may take. All that the court is required to do is to satisfy itself as to whether there are sufficient grounds for proceeding. The learned Single Judge committed a serious error in going into the merits and demerits of the case and the impugned order is liable to be set aside.*

(iii) **Bhushan Kumar & Another vs. State (NCT of Delhi) & Another** reported in **(2012) 5 SCC 424.** The relevant paragraph Nos. 13 and 14 upon which reliance has been placed are being reproduced as under : -

***"13.*** *Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued.*

***14.*** *Time and again it has been stated by this Court that the summoning order under Section 204 of the Code requires no explicit reasons to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith.***"**

**5.** Heard both the sides and perused the FIR, case

diary and other relevant materials. The instant matter relates to unnatural death of informant's son. There are some circumstances which are in favour of prosecution's allegation. Firstly, the conduct of the accused including the petitioners remained suspicious after the death of the informant's son, secondly, at the Balu Ghat (sand area) at where the informant's son used to work for loading the trucks with sand with the help of JCB machines, the dead body of the victim was not found when the informant reached at that place and the accused persons, who were present there at that time, did not give satisfactory answer to the informant and JCB machine was also not working at that time. If the death of the deceased had taken place due to an accident then the informant ought to have been informed immediately by the accused including the petitioners, who were involved in sand loading work, about the commission of the accident and during investigation, the investigating officer did not find any sign of accident. Though, no one among the persons, who were examined by the Investigating Officer, claimed to have seen the occurrence of killing which has been alleged by the informant but it is also admitted position that none of them claimed to have seen the occurrence of accident as pleaded by the accused. These circumstances are sufficient to

justify the informant's suspicion about a criminal wrong having been committed with his son by the accused persons and the investigation remained faulty and the investigating officer did not investigate properly at the initial stage so the informant had to approach this Court by filing Cr.WJC No. 70 of 2014 but even then, the dead body of the victim could not have been recovered. These materials are sufficient to justify the cognizance of the offences under sections 302 and 201 of IPC in respect of the petitioner Gudu Kumar @ Guddu Yadav, against him the investigation had been completed before taking the cognizance. So far as the legality of the impugned order to the extent of summoning other petitioners for the alleged offences, of which cognizance has been taken, is concerned the same appears to be not in accordance with law as against them, the investigation was kept pending by the investigating officer and the same was running when the impugned order taking cognizance against them was passed. The provisions of section 190(1) of Cr.P.C. deal with the Magistrate's power of taking cognizance of an offence. The Magistrate can take cognizance of an offence either upon receiving a complaint of facts which constitute such offence or upon a police report of such facts or upon an information received from any person other than a

police officer or upon his own knowledge that such offence has been committed. Though the informant had filed a protest petition before passing the order of cognizance and the same was pending when the impugned order was passed but admittedly, the concerned Magistrate did not proceed on that protest petition and it is also an admitted position that there was no police report before the Judicial Magistrate in respect of the petitioners, namely, Nanda Yadav @ Nand Kishore Yadav, Jagdish Yadav and Sidheshwar Prasad @ Baunand Yadav as against them, the investigation was running and clause (c) of section 190(1) of Cr.P.C. deals with different situation which is not applicable in the present matter. The principle laid down by the Hon'ble Apex Court in the case of **Abhinandan Jha** (supra) upon which reliance has been placed by the petitioners' counsel is not relevant in the present matter as it simply deals with the Magistrate's power upon receiving a police report while the present matter relates to the propriety of cognizance order which has been challenged by the petitioners so the observations made by the Hon'ble Apex Court in the said case do not help the petitioners. Similarly, the principles laid down by the Hon'ble Apex Court in the above-mentioned cases of which reference has been given by O.P. No. 2's counsel are also not relevant to

deal with the issues involved in the present matter. Accordingly, I am of the view that the order impugned summoning the petitioners Nanda Yadav @ Nand Kishore Yadav, Jagdish Yadav and Sidheshwar Prasad @ Baunand Yadav is technically bad as when the cognizance of the offences was taken neither there was police report in respect of them nor the Magistrate proceeded on the protest petition against them, however, the materials available in the case diary are the same as that of available against the petitioner Gudu Kumar @ Guddu Yadav who had been chargesheeted before passing the order impugned, so, in view of this position as well as deeming the magistrate's act as to summoning the above petitioners before the completion of investigation against them mere an irregularity in view of the provisions of section 460 of Cr.P.C. which in my opinion does not vitiate the further proceeding of the trial against the said petitioners which started against them after the cognizance as there are sufficient materials in the case diary as discussed above to proceed with the alleged offences against them also. Moreover, the trial of the petitioners has started and after framing of the charges upon them, two prosecution witnesses have been examined as stated by informant's counsel, so, in such a situation, it will not be proper and justifiable to set aside

the cognizance order against above-mentioned petitioners merely on account of above irregularity as there are sufficient circumstances and materials to justify the cognizance of the alleged offences and summoning of the petitioners for the said offences. As such, this Court finds no merit in these petitions, so, both the criminal miscellaneous petitions stand dismissed.

**(Shailendra Singh, J)**

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