

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. M.P. No. 898 of 2020

Lutfal Hoque @ Lutful Haque..... **Petitioner(s)**

Versus

State of Jharkhand..... **Opp. Party(s)**

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Coram: Hon'ble Mr. Justice Ananda Sen
Through:-Video Conferencing

For the Petitioner : Mr. R.S.Mazumdar, Sr. Advocate

For the State : A.P.P.

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3/10.09.2020 The lawyers have no objection with regard to the proceeding, which has been held through video conferencing today at 11.00 A.M. They have no complaint in respect to the audio and video clarity and quality.

This case was listed/ supposed to be listed before the Lawazima Board for passing an order in respect of the defects, pointed out by the office.

Considering the pandemic situation where the Court has minimized the footfall of the lawyers and their Clerks in the Court, this court felt proper to get all the cases listed before this Court so that the defects can be looked into at this stage only. Thus, this case is listed today before this Court directly.

Learned senior counsel for the petitioner prays to ignore the defect and take up the matter on merits.

The defects stand ignored.

Heard Mr. Mazumdar, learned senior counsel for the petitioner and learned counsel for the State.

The petitioner, in this application, has challenged the summoning order, which has been passed on 17.09.2019, after taking cognizance.

I have gone through the impugned order dated 17.09.2019. I find that the court below has taken cognizance against the accused. It is settled that cognizance is taken against the offence and not against the accused. The accused are to be summoned only if there are materials to proceed against them. What are the materials to summon the accused must be reflected in the order. In a case, there may be situation where the offence is made out, but there is not enough material to proceed against a few accused. The court has to find out as to what are the materials to proceed against the accused and then only have to pass an order, summoning them. This exercise has not been done by the court in this case.

Considering the order passed by this Court in the case of "**Amresh**

Kumar Dhiraj & Ors.- versus- State of Jharkhand & Anr, reported in 2020 (1) JLR 199 (Jhr.)”, I am inclined to allow this application. Accordingly, this application is allowed. The impugned summoning order dated 17.09.2019, passed by the Judicial Magistrate, 1st Class, Pakur in G.R. No. 365 of 2019, whereby the petitioner has been summoned, is, hereby, set aside. The matter is remitted to the Court below to pass a fresh order in this regard.

This criminal miscellaneous petition stands allowed.

(Ananda Sen, J)