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**(1999) 09 AHC CK 0024**

**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous Application No. 711 of 1999

Dr. Acchan alias Mohd. Shamim Siddiqui and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision :** 16-09-1999

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 173, 209, 239, 482

**Citation :** (2001) 1 ACR 335

**Hon'ble Judges :** I.M. Quddusi, J

**Bench :** Single Bench

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## **Judgement**

I.M. Quddusi, J.—This petition u/s 482, Cr. P.C. has been filed for quashing of the criminal proceedings after submission of the charge-sheet filed by the police.

2. There is no sufficient material available on record before this Court to appreciate as to whether a prima facie case has been made out or not and this Court also cannot appreciate the order passed by the learned court below in the absence of the material on the basis of which the order was passed.

3. There are two types of case, one triable by the learned Magistrate and the other triable exclusively by the Court of Sessions. In case the case is triable by the Judicial Magistrate, Section 239, Cr. P.C. shall apply when the case is a warrant case, u/s 239, Cr. P.C. It is always open for an accused to raise objection in case in his opinion no case is made out on the basis of the material available on record filed in support of the charge-sheet. The provisions of Section 239, Cr. P.C. are quoted as under:

When accused shall be discharged.-If upon considering the police report and the documents sent with it u/s 173, Cr. P.C. and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reason for so doing.

4. In the event of the case being exclusively triable by the Court of Sessions provisions of Section 209, Cr. P.C. after inclusion of U.P. amendment would apply which are quoted below:

When in the case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall

(a) as soon as may be after complying with the provisions of Section 207, commit the case to the Court of Sessions;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody until commitment of the case under Clause (a) and thereafter during and until the conclusion of trial.

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence, (d) notify the public prosecutor of the commitment of the case to the Court of Sessions.

5. The language of Section 209, Cr. P.C. is very clear. It provides that when in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall commit it to the Court of Sessions. The word "it appears to the Magistrate" used in Section 209, Cr. P.C. denotes that first of all the Magistrate has to satisfy himself whether on the basis of the material available on record prima facie offence is made out against the accused which is exclusively triable by the Court of Sessions. If the Magistrate is not satisfied that the offence is triable exclusively by the Court of Session then he would record his reasons and in that case he would not commit the case to the Court of Session and would try the same himself. Hence, in the case where according to the police report the offence is triable exclusively by the Court of Session it is not necessary that the Magistrate may act merely by seeing the sections of Indian Penal Code or any other criminal law to commit a case to the Court of Sessions, but it is the duty of the Magistrate to peruse the material available on record and then make his opinion to the effect that from the material available on record there is prima facie case made out against the accused persons to prosecute them for the offence triable exclusively by the Court of Sessions.

6. In view of this, it is always open for the accused persons to raise objections before the Magistrate concerned to the effect that the nature of the alleged act or omission made punishable on the basis of the material available on record, does not constitute an offence triable by the Court of Session and if such an application is moved the Magistrate is duty bound to consider the same before committing the case to the Court of Session.

7. Considering the facts and circumstances of the case and in view of the above discussions, this petition is finally disposed of with the direction to learned court

concerned that in case the Petitioner moves an application taking the above-mentioned ground or any other ground the same shall be considered and disposed of by reasoned order within six weeks from the date when a certified copy of this order becomes ready, if applied for within a week from today, in accordance with law expeditiously, but in that case the Petitioner shall be permitted to appear through counsel till the disposal of that application and till such disposal further proceedings in the case except those which are necessary for the disposal of the application, shall remain stayed. However, the benefit of this order would not be available to the Petitioner if he moves application after expiry of the aforesaid period.

There is no order as to costs.

The office is directed to intimate the Court concerned in this regard within six weeks.