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**(2000) 03 OHC CK 0060**

**In the Orissa High Court**

**Case No :** Criminal Miscellaneous Case No. 4973 of 1999

Pratima Behera

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

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**Date of Decision :** 27-03-2000

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 204, 319, 482  
Penal Code, 1860 (IPC) — Section 302, 34

**Citation :** (2000) 18 OCR 612

**Hon'ble Judges :** P.K. Tripathy, J

**Bench :** Single Bench

**Advocate :** D.P. Pattnaik and S.N. Biswal, for the Appellant; R.K. Pattnaik, A.S.C., for the Respondent

**Final Decision :** Allowed

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## Judgement

P.K. Tripathy, J.—Heard.

2. This application u/s 482, Code of Criminal Procedure is disposed of at the stage of hearing on admission with active participation of both the parties. Petitioner is the informant in G.R. Case No. 18/99 pending in the Court S.D.J.M., Jagatsinghpur arising out of Jagatsinghpur P.S. Case No. 13/99. The offences alleged are under Sections 302/34, I.P.C. Petitioner filed an application in the Court of S.D.J.M., to issue process against opposite party Nos. 2 and 3. Learned S.D.J.M. rejected that prayer vide the impugned order dt. 22.9.99 on the ground that after taking cognizance of the offence and issuing process against the charge-sheeted accused persons he was founts officio to exercise further power to issue process to any other persons. He was also of the view that exercising such power is only available u/s 319, Code of Criminal Procedure and that to by the trial Court.

3. As rightly argued by the learned Counsel appearing for the Petitioner and correctly conceded by the Addl. Standing Counsel appearing for the State, learned S.D.J.M. misconceived the position of law and passed a wrong order.

After submission of charge-sheet, it is the duty of the Magistrate to peruse the case diary and to find out against who he is to issue process. In other words, at that stage he is to find out if a prima facie case is made out against any person and accordingly he is to issue process if he finds prima facie materials to proceed against any other person besides the charge-sheeted accused person. That order of the Magistrate is not in exercise of the power u/s 319, Code of Criminal Procedure but such order is one u/s 204, Code of Criminal Procedure. Thus, if the learned cognizance taking Magistrate finds that a prima facie case exists against some more persons other than the charge-sheeted accused persons, he should issue process to them to face the trial. That being the position of law, the impugned order is set aside and the learned S.D.J.M. is directed to peruse the case diary and to pass appropriate order in accordance with law. In other words, if the learned S.D.J.M. shall find that there are sufficient materials to proceed against opp. party Nos. 2 and Udhaba and Kilash then he may issue processes to them.

4. The Criminal Misc. Case is allowed accordingly.