

**BEFORE
THE HON'BLE MR. JUSTICE S.R.SEN**

26-02-2018

Seen a letter dated 5th February, 2018 addressed to the Registrar General, High Court of Meghalaya, Shillong by one Smti. D. Sohtun, Judicial Magistrate First Class, Shillong through the District and Sessions Judge, Shillong, wherein she stated that as per the instruction given by this Court vide order dated 06-11-2017 passed in Tr.P (Crl). No. 3/2017, to dispose the GR Case (A) No. 98/2011 within three months from the date of the order, but she could not dispose the matter on the ground mentioned therein which is reproduced herein below:

“...That the instant case is pending for return of service report on NBWA and P&A issued against the absentee accused persons Shri Sohan D.Shira, Shri Hedeo Momin @ Selopa, Shri Reading T Sangma @ Jakpil and Shri Baichung Momin @ Nikkam.

That till date no service report returned back from South Garo Hills. That several reminders has been sent to return back the service report so as to enable this court to expedite the disposal of the matter....”

Mr. S.Dey, learned counsel appeared on behalf of the accused, Mr. Champion R. Sangma and submits that it is unfortunate that except for Shri Sohan D.Shira, all the other accused as mentioned in the extension petition have already surrendered before the police, but the reasons best known to the police and the administration, they were not produced before the Court.

If it is so, Director General of Police, Meghalaya, Shillong is hereby directed to produce those accused who were required for the trial as mentioned above.

Thereafter also, if the accused are not produced before the court, then in that case Court can take the recourse under Section 317 CrPC which is reproduced herein below:

“317. Provision for inquiries and trial being held in the absence of accused in certain cases.- (1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.”

It is clearly mentioned if one of the accused is absent and other accused are present, the case cannot be prolonged on the mere ground that other accused are not available. Court should follow the procedure of Section 317 CrPC after issuing fresh reminder to the IO concerned through the Director General of Police, Meghalaya, Shillong and to dispose the case GR (A) No. 98/2011 Baghmara PS C/No. 62(10) 2011 u/s 120B/365/386/109 IPC within 2(two) months from the date of this order, failing which the matter will be taken up seriously.

With this observation and direction, this Misc. case stands disposed of.

JUDGE

S.Rynjah