

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34680 of 2014

Arising Out of PS.Case No. -5 Year- 2012 Thana -HASANPUR District- SAMASTIPUR

=====

1. Ashok Kumar Rai S/o Late Rama Kant Rai, R/o- Vill. + P.O.- Sarkarpur,
P.S. Hasanpur, Dist. Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. Arvind Kumar Son of not known, Block Supply Officer, Rosera-cum-In-charge Assistant, District Supply Officer, Rosera

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur
Mr. Krishna Chandra
Mr. Avinash Kumar, Advocates
For the State : Mr. Binod Kumar No.2 (APP)

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

5 09-08-2017 Heard Mr. Ajay Kumar Thakur, on behalf of the
petitioner and counsel appearing on behalf of the State.

The petitioner has challenged the order of cognizance dated 19.2.2014 passed by the Sub-Divisional Judicial Magistrate, Rosera in Hasanpur P.S. Case No. 5/2012.

Submission on behalf of the petitioner is that the Sub-Divisional Judicial Magistrate was obliged to apply his judicial mind before passing the impugned order. From the material available on the record it does not appear that there was



any application of judicial mind by the Sub-Divisional Judicial Magistrate while passing the order taking cognizance dated 19.2.2014. Counsel submits that in the instant case the petitioner may not have occasion to assist the court below alike the provisions of discharge and as such the submission is that this Court should consider the totality of the fact situation and exercise jurisdiction under Section 482 Cr.P.C. However, referring to various provisions of the Code of Criminal Procedure, he submits that this Court may in exceptional circumstances issue direction to the court below to hear the petitioner at the time of explaining the accusation under Section 251 Cr.P.C.

Considering the order taking cognizance dated 19.2.2014 and on the fair submission advanced by Mr. Thakur that the Court below may have the advantage of perusal of the entire documents at the sage of exercise of jurisdiction under Section 251 Cr.P.C., the application is disposed of with liberty to the petitioner to approach the Court below and submit with reference to materials that no case is made out against the petitioner for proceeding under Section 7 of the Essential Commodities Act. If such application is filed before the court below, the Court below is required to apply its judicial mind on the materials and the submissions made at the time of explaining the accusation under



Section 251 Cr.P.,C. by a reasoned speaking order.

With the aforesaid, the application stands disposed
of.

(Anil Kumar Upadhyay, J)

S.Pandey/-

U		T	
---	--	---	--

