

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41021 of 2014

Arising Out of PS.Case No. -3 Year- 2012 Thana -BAJPATTI District- SITAMARHI

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Dharmendra Kumar Singh, S/o Late Chandrika Prasad Singh, R/o Village- Chahuta,
P.S.- Aurai, District- Muzaffarpur. A/p- Mohalla- Kumar Chowk, P.S.- Dumra,
District- Sitamarhi

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dinesh Jha, Adv.

For the Opposite Party/s : Mr. Parmanand Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 04-10-2017

Heard learned counsel for the petitioner and learned
APP for the State.

Learned counsel for the petitioner challenges the order
taking cognizance dated 28.06.2013 passed by the learned Sub-
Divisional Judicial Magistrate, Pupri at Sitamarhi in Bajpatti P.S.
Case No.3 of 2012 by which the learned Sub-Divisional Judicial
Magistrate has taken cognizance of the offence under Section 379 of
the Indian Penal Code read with Section 40 of the Bihar Minor
Mineral Concession Rules, 1972 and decided to issue summons to the



petitioner.

Learned counsel for the petitioner submits that the case has been registered under Section 379 of the Indian Penal Code as well as under Section 40 of the Bihar Minor Mineral Concession Rules, 1972 by the officer in-charge of the police station, but according to Section 41 of the Bihar Minor Mineral Concession Rules, 1972 no court inferior to that of a Magistrate of the First Class shall try any offence punishable under these Rules and no court shall take cognizance of any offence under these Rules, except upon a complaint made in writing by [Competent Officer or Deputy Director of Mines or [Additional Director of Mines or Director of Mines] or any other officer empowered by the Government]. Learned counsel, however, is not in a position to say whether or not the officer incharge of the police station is an officer empowered.

In the opinion of this Court, the petitioner, if so advised, shall raise all such pleas in the court below at the time of framing of charge. If such a plea is raised by the petitioner including judicial pronouncements on the subject, the same shall be considered by the court below in accordance with law on the basis of the materials available on the record.

This Court is not inclined to interfere with the order taking cognizance at this stage. The application stands disposed of



with the observations stated above.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
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