

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36224 of 2014

Arising Out of PS.Case No. -42 Year- 2008 Thana -ROSERA District- SAMASTIPUR

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Dinesh Nayak, S/o Late Rameshwar Nayak, Resident of village Cinema Chowk,
Rosera, Distt. Samastipur.

.... Petitioner

Versus

1. The State of Bihar.
2. Samir Sheikh, S/o Amir Sheikh, Resident of 34/C Kama Park, Kama Road
Andheri West, Mumbai - 48 (Maharashtra).

.... Opposite Parties.

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Appearance:

For the Petitioner/s : Mr. Abhay Krishna and
Dr. Shashi S. Kishore, Advocates.

For the Opposite Party/s : None.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 28-08-2017

Heard learned counsel for the petitioner.

2. No one appears for the State.

3. The petitioner, in the present case, is seeking quashing
of the order dated 11.07.2013 passed by learned Judicial Magistrate 1st
Class, Rosera in Rosera P.S. Case No. 42/2008, giving rise to T.R.
No. 1888/2013, by which the learned Magistrate has taken cognizance
of the offence under Sections 419 / 420 / 120B I.P.C. read with
Section 63 of the Copyright Act and decided to issue summons
against the petitioner.

4. Learned counsel for the petitioner submits that there are
allegations against the petitioner that he was selling cement in the



brand name of Birla White Cement but, in fact, he was found involved in selling bad quality of cement and, therefore, there is an allegation that he was also involved in duping the customers. Submission is that there is no enquiry report or test report on the basis of which it can be alleged that the cement bags, which were seized from the shop of the petitioner, were of sub-standard quality, therefore, the order taking cognizance is fit to be quashed by this Court.

5. This Court has gone through the contents of the written report which is the basis of lodging of the First Information Report (Annexure-1); a perusal of the same would show that this petitioner was involved in mixing cement by filling up sub-standard quality of cement in jute bags and, therefore, he was actively involved in selling sub-standard cement in the brand name of Birla White Cement. After investigation, police has submitted charge sheet and based thereon the order taking cognizance has been passed by the learned Judicial Magistrate. A copy of the case diary is also available on the record and this Court has perused the same. Sufficient materials have been shown in the case diary for purpose of finding out a *prima facie* case against the petitioner. This Court is, therefore, not inclined to quash the order taking cognizance and issuance of summons. The application is, therefore, dismissed.

6. However, the petitioner may raise all such pleas, which



are available to him, in the court below at the time of framing of charge.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.08.2017
Transmission Date	N/A

