

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46112 of 2014

Arising Out of PS.Case No. -149 Year- 2010 Thana -ROSERA District- SAMASTIPUR

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Pawan Kumar Singh S/o Late Dahu Singh Resident of village-Katghara, P.S.-
Hathuri, District- Samastipur

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Dhananjaya Nath Tiwari, Advocate.

For the Opposite Party/s : None.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 11-10-2017

Heard learned counsel for the petitioner.

2. No one appears for the State.

3. The petitioner, in the present case, is seeing quashing of the order dated 19.06.2014 passed in Rosera P.S. Case No. 149/2010, Trial No. 4079/2014, by learned S.D.J.M., Rosera by which he has taken cognizance of the offence under Section 7 E.C. Act and decided to proceed against the present petitioner.

4. A very short question has been raised by the learned counsel for the petitioner to assail the order dated 19.06.2014 impugned in the present application. Submission is that once after investigation police submitted a final form and the petitioner was not sent up for trial saying that no material could be collected against him



for submission of charge sheet, it was incumbent upon the learned Magistrate to assign reasons if he wanted to differ with the police report at the time of taking cognizance and issuance of summons to the present petitioner.

5. Learned counsel has referred order dated 01.04.2015 passed in Cr. Misc. No. 33154 of 2012 and order dated 11.09.2017 passed in Cr. Misc. no. 17484 of 2014 by two different co-ordinate benches of this Court to press the unanimous view of the bench that while differing with the police report the learned Magistrate should mandatorily apply his mind and briefly assign some reasons for taking a different view and proceed against the non-charge-sheeted accused.

6. A perusal of the order dated 19.06.2014 passed by the learned Additional Chief Judicial Magistrate, Rosera would show that he has not indicated any reason except that a general statement that on the basis of the evidence on record a *prima facie* case is made out. What is the evidence on record which prevailed with the learned Additional Chief Judicial Magistrate to differ with the police report should have been briefly indicated in the order which has not been done.

7. In the aforesaid view of the matter this Court is convinced that the order taking cognizance and issuance of summons in so far as it relates to the present petitioner cannot sustain. The order



dated 19.06.2014 passed in Rosera P.S. Case No. 149/2010, Trial No. 4079/2014, is set aside as regards the petitioner with a direction to the learned Additional Chief Judicial Magistrate to pass a reasoned order afresh.

8. The application is allowed to the extent indicated herein-above.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.10.2017
Transmission Date	12.10.2017

