

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40093 of 2012

Arising out of P.S. Case No.100 Year 2011 Thana -Kishanganj District- KISANGANJ

Ashok Kumar Agrawal, Son of Late Surajmal Sarawagi, Resident of Mohalla Purabpali, P.S. Kishanganj, District Kishanganj.

.... Petitioner

Versus

1. The State of Bihar.
2. Pratap Singh, Son of not known to the petitioner, Officer-in-Charge, Kishanganj Police Station, P.S. Kishanganj, District Kishanganj.
3. Surya Deo Dubey, Son of not known to the petitioner, Investigating Officer of the instant case, P.S. Kishanganj, District Kishanganj.

.... Opposite Parties

Appearance :

For the Petitioner : Mr. Radha Mohan Singh, Advocate

For the State : Mr. Ajay Kumar-I, APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 28-06-2017

Counsel for the petitioner is permitted to correct the first paragraph of the quashing petition in view of the supplementary affidavit filed by him.

2. Heard learned counsel for the petitioner and the learned APP appearing on behalf of the State.

3. The petitioner has challenged the order taking cognizance dated 02.06.2012, passed by learned Chief Judicial Magistrate, Kishanganj in connection with Kishanganj P.S. Case No.100 of 2011. On perusal of the materials collected during investigation and after submission of charge sheet, cognizance is taken under Sections 285, 286, 413, 414, 419, 420 and 120(B) of the Indian Penal Code.



4. Learned counsel for the petitioner submits that the petitioner was made accused in this case only on the basis that he was the owner of the premises whereas fact is that he was not involved in this alleged offence. He had no knowledge of the activities, if any going on by other accused as he had let out the premises to Pawan Agrawal. Moreover, the seized items including some bags of cement and tractor have been released to the persons who have claimed to be the owner of those materials and the report of the Testing & Research Institute, Road Construction Department, Bihar, Patna had found the strength of the cement bearing in between 25.5% to 29%.

5. The learned Additional Public Prosecutor submits that the illegal activity was going on in the premises of the petitioner. There is no document to show that he had rented out the premises to Pawan Agrawal and release of seized materials is no ground for setting aside the order of cognizance.

6. The prosecution case in brief is that receiving secret information that in the residential premises Ashok Kumar Agrawal, the petitioner, in association with Pawan Agrawal, Md. Tahir and Md. Zahid are engaged in preparing spurious cement, the Officer-in-Charge raided the premises and apprehended all accused persons including the petitioner at the spot and seized a tractor



parked there, which was without any registration number loaded with cement, many bags of cement of different brands along with empty bags of different brands of cement companies, many sacks of expired cement, welding rods, steel plates, sieve, 795 pieces cartons of match sticks and other items used in preparation of spurious cement were recovered. The police has also lodged a case under various sections of the Company Trademark Act and during investigation, the strength of the cement recovered from there was only found having bearing strength between 25.5% to 29%. Police finding the case true submitted charge sheet against all the accused persons.

7. Having considered the rival submissions and on perusal of the materials on record specially the evidence collected during investigation mentioned in the case diary, prima facie case is made out against the petitioner. The petitioner was apprehended at the spot by the police, according to the prosecution case, illegal activities of making spurious cement was being run within the residential premises of the petitioner, there is no any document produced by the petitioner to show that he had rented out the premises to Pawan Agrawal, moreover release of the cement and tractor to other accused is no ground for disbelieving the prosecution case at this stage hence no ground for interference with



the order of cognizance dated 02.06.2012, passed by learned Chief
Judicial Magistrate, Kishanganj in connection with Kishanganj P.S.
Case No.100 of 2011 is made out.

8. The quashing petition stands dismissed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.07.2017
Transmission Date	13.07.2017

