

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.40660 of 2015**

Arising Out of PS.Case No. -241 Year- 2012 Thana -DESARI District- VAISHALI(HAJIPUR)

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Budhan Rai son of Late Maha Rai resident of Village - Jaga Chandpur, P.S. -  
Deshri, District - Vaishali.

.... .... Petitioner

Versus

The State of Bihar.

.... .... Opposite Party

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**Appearance :**

For the Petitioner : Mr. Vijay Anand, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 25-07-2017**

By way of the present application preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), the petitioner has sought for quashing the order dated 24.06.2015 passed by the learned Judicial Magistrate, Vaishali at Hajipur in Trial No. 6921 of 2015, arising out of Deshri Chandpura P. S. Case No. 241 of 2012 whereby cognizance has been taken under Section 7 of the Essential Commodities Act against the petitioner.

2. The prosecution case is based on written report submitted by one Jainendra Kumar, Block Supply Officer, Deshri to the officer-in-charge of the police station wherein it has been alleged that the informant made inspection in the shop of the petitioner and recorded the statements of consumers, who made an allegation of short supply of kerosene oil and further alleged that extra allotment of kerosene oil for each family was not supplied to the consumers.



3. The matter was investigated by the police and on completion of investigation vide Final Report No. 57 of 2013 dated 15.04.2013, the investigating officer submitted a report holding the case not to be true as no sufficient evidence was collected during investigation.

4. Learned Magistrate differed with the police report and took cognizance of the offence punishable under Section 7 of the Essential Commodities Act, vide impugned order dated 24.06.2015, and made over the case to the court of Sub-divisional Judicial Magistrate for disposal.

5. It is contended by the learned counsel for the petitioner that the petitioner is innocent and his implication in the present case is nothing, but an abuse of the process of the court. It is further contended that nine consumers who made an allegation of short supply of kerosene oil before the inquiry officer, were examined by the investigating officer, but they had not supported the allegation during investigation. It is also contended that the petitioner has not violated any terms and conditions of the licence.

6. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State submitted that the learned Magistrate after going through the materials collected during investigation, including the statements of the witnesses recorded under Section 161(3) of the



Cr.P.C. and the substance of accusation recorded in the police report found a *prima facie* case to be made out against the petitioner and thus, took cognizance of the offence alleged. He has submitted that the order passed by the learned Judicial Magistrate is neither perverse nor erroneous.

7. I have heard learned counsel for the parties and perused the record.

8. It is well settled in law that the Magistrate can take cognizance under three circumstances enumerated under Section 190 of the Cr.P.C., which reads as under :-

**“190. Cognizance of offences by Magistrates.- (1)**

Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence –

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”



9. Though the submission has been made by the learned counsel for the petitioner that no reason of difference has been assigned by the Magistrate while taking cognizance of the offence differing with the police report and, thus, the impugned order is bad in law, in my considered opinion, in view of the provisions prescribed under Section 190 of the Cr.P.C., there is no such requirement in law. It is not required that the Magistrate while differing with the police report has to assign reason, rather the requirement is that if there is *prima facie* material to proceed with the case, the Magistrate would take cognizance of the offence and summon the accused to face trial.

10. In view of the fact that on examination of the materials collected during investigation, the learned Magistrate has found the allegation to be true under Section 7 of the Essential Commodities Act, I see no illegality in the impugned order. Accordingly, the application is dismissed.

**(Ashwani Kumar Singh, J.)**

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