

**(2015) 04 PAT CK 0042**  
**In the Patna High Court**  
**Case No : Criminal Misc No. 33154 of 2012**

Girijesh Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

**Date of Decision :** 01-04-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Essential Commodities Act, 1955 — Section 7

**Citation :** (2015) 3 PLJR 62

**Hon'ble Judges :** Rakesh Kumar, J

**Bench :** Single Bench

**Advocate :** D.N. Tiwary and Tapeswar Sharma, for the Appellant; Ram Sumiran Rai, Advocates for the Respondent

**Final Decision :** Allowed

## Judgement

Rakesh Kumar, J—Heard learned counsel for the petitioner and Sri Ram Sumiran Rai, learned Addl. Public Prosecutor. The petitioner, invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 27.9.2011 passed in Ghosi P.S. Case No. 49 of 2000 (T.R. No. 1991 of 2012). By the said order, the learned Chief Judicial Magistrate, Jehanabad after rejecting the final report (mistake of fact) took cognizance of the offence under Section 7 of the E.C. Act.

2. Learned counsel for the petitioner submits that after inspection/verification, the case was instituted under Section 7 of the E.C. Act and the petitioner was named as accused in the F.I.R. During investigation, no material has been collected by the Investigating Officer and, as such, final report was submitted exonerating the petitioner. However, learned Chief Judicial Magistrate, even though final report was submitted, has passed order of cognizance.

3. It has been argued that while passing order of cognizance, the learned Magistrate has not recorded any reason for differing with the police report or rejected the police report.

4. Besides hearing learned counsel for the parties, I have also perused the materials available on record including the order impugned. On perusal of the order impugned, it is evident that the learned Magistrate, while differing with the police report, has not assigned any reason. Only in one line, it has been indicated that final report is rejected. The Court is of the opinion that once after investigation, the Investigating Officer had submitted final report exonerating the petitioner, it was not required to be rejected as if it was a waste paper. Of course, the learned Magistrate was competent to take cognizance of offence differing with the police report, but in that event, it was mandatorily required to succinctly assign reason while differing with the police report. Since no plausible reason has been assigned, the order is liable to be interfered with. Accordingly order impugned is set aside and the petition stands allowed.