

(2017) 11 PAT CK 0036

In the Patna High Court

Case No : 42749 of 2014

Abhishek Kumar Son of Dinesh Kumar Gupta

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-11-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Electricity Act, 2003](#), [Section 154](#), [Section 135](#) - Procedure

Citation : (2018) 1 PLJR 670

Hon'ble Judges : Mohit Kumar Shah

Bench : SINGLE BENCH

Advocate : Ramashish,, Anand Kumar Ojha

Final Decision : Dismissed

Judgement

1. The present case arises out of Gaya Kotwali P.S. Case No. 37 of 2013 dated 12.02.2013 registered on the basis of complaint made by one Suraj Kumar Rajak, Assistant Electrical Engineer, Gaya Urban wherein it has been stated that on 12.2.2013 at about 12:00 in the afternoon, he along with other officials of the Electricity Department as well as the police force of the local police station conducted a raid in the premises of one Shri Dinesh Kumar Gupta situated at Tutwari Chowk Road near Balti Karkhana, Gaya and it was found that he was engaged in the theft of energy by by-passing meter of his industrial electricity connection installed in his premises. Load was found to be 23.72 H.P. (17.69 K.W.) L.T.I.S.-1. The seizure

list was made and the petitioner who was present on the spot, was arrested. It was estimated that on account of the said theft of energy, a loss of Rs. 3,25,250/- has been caused. On the basis of the said complaint of the Assistant Electrical Engineer, Gaya dated 12.2.2013, Kotwali P.S. Case No. 37 of 2013 was lodged under section 135 of the Electricity Act. Thereafter, the learned Special Judge, (Electricity), Magadh Area, Gaya by an order dated 10.4.2013, after filing of the charge sheet by the Police against the petitioner, has been pleased to take cognizance against the petitioner herein under section 135 of the Electricity Act.

2. The aforesaid order dated 10.04.2013 passed by the learned Special Judge, (Electricity), Magadh Area, Gaya is under challenge in the present proceeding.

3. This Court by an order dated 04.10.2017 had called for the case diary as well as a report from the learned trial court with regard to the present stage of the case. The learned trial court has submitted a report stating that cognizance has been taken in the present case and the matter is pending for supply of police papers to the accused persons.

4. The learned counsel for the petitioner has submitted that a bare perusal of the FIR would show that the theft was being committed by Shri Dinesh Kumar Gupta i.e. the father of the petitioner herein and not by the petitioner herein, who is said to have been apprehended while he was just present at the spot. The learned counsel for the petitioner has further referred to the judgment of the Hon"ble Supreme Court reported in 1992 (suppl.) 1 SCC 335 (State of Haryana vs. Bhajan Lal), and a judgment of this Court reported in 2007(4) PLJR 215 (Nand Kishore Singh & Anr. vs. The State of Bihar) to contend that if the FIR/complaint does not disclose any offence, the Court can quash the prosecution under its inherent

jurisdiction.

5. Per contra, the learned counsel for the opposite party no. 2, Shri Anand Kumar Ojha, has contended that it would not be appropriate to quash the criminal prosecution at this stage since charge sheet has already been filed against the petitioner herein and cognizance has also been taken against the petitioner, as such the case is ripe for trial. The learned counsel for the opposite party no. 2 has placed reliance on judgments reported in:-

(1) AIR 2005 SC 4284 (CREF Finance Ltd. Vs. Shree Shanthi Homes Pvt. Ltd. and Anr.)

(2) (1976) 3 SCC 252 (Devarapalli Lakshminarayana Reddy and ors. vs. V. Narayana Reddy and ors .)

(3) (2000) 7 SCC 183 (Narsingh Das Tapadia vs. Goverdhan Das Partani & Anr .)

(4) (1988 (4) SCC 655) (State of Bihar vs. Murad Ali Khan)

(5) AIR 2012 SC 1890; as well as on a judgment delivered by the Hon"ble High Court of

Delhi at New Delhi dated 02.02.2010, passed in CrI. L.P. No. 45 of 2003 in the case of Santosh Aggarwal vs. Aushim Kapoor and another and of the Hon "ble Kerala High Court dated 29.10.2015 passed in Criminal MC. No. 609 of 2013 in the case of Gireesan R. vs. the State of Kerala and another. The learned counsel by placing reliance on the aforesaid judgments, has contended that cognizance is taken of an offence and the same only amounts to taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the causes or matter judicially, thus no infirmity exists in taking cognizance of the offence in the present case, which is otherwise made out from a bare perusal of the FIR. It is also contended that since the petitioner is just to be served with the police papers, followed by framing of charge, the petitioner would have liberty to claim discharge, hence at this stage it would not be

appropriate to quash the FIR. Lastly, it has been submitted that Electricity is public property and theft of electricity being triable by a Special Court under the scheme of Section 154 of the Electricity Act, any interference with the FIR would have serious consequences.

6. I have heard the learned counsel for the parties and perused the materials on record. I find that pursuant to the FIR, charge sheet has also been filed by the police against the petitioner, finding the case to be true, whereupon the learned Special Judge, (Electricity), Magadh Area, Gaya, by an order dated 10.04.2013 has been pleased to take cognizance against the petitioner herein. I further find from the record that prima facie case has been found regarding commission of theft of electricity in the premises where the industrial electricity connection was existing in the name of the father of the petitioner and theft of electricity was being committed by by-passing the meter as well as the petitioner was arrested from the said place of incident. At this stage, it would be prejudicial to the petitioner if any comment is made on the merits of the case. However, the fact remains that prima facie FIR discloses commission of cognizable offence, hence, upon perusal of the FIR, it cannot be said that no case is made out. In any case the police has conducted investigation and submitted charge sheet against the petitioner herein, his complicity in the alleged commission of theft of electricity cannot be ruled out and the innocence or guilt of the petitioner would depend upon evidence being adduced at the time of trial and the trial reaching its logical conclusion.

7. It is a trite law that this Court, under its jurisdiction under section 482 of the Code of Criminal Procedure, would not embark on an enquiry as to whether the allegations in the FIR and the charge sheet were reliable or not and thereupon to render definite finding about the truthfulness or veracity of the allegations. Even if the case

law, referred to by the learned counsel for the petitioner is considered, i.e. the judgment of the Hon''ble Apex Court rendered in the case of Bhajan Lal (supra), this is not a case where a bare reading of the FIR and the allegations leveled therein do not prima facie make out any case against the petitioner herein. In the present case commission of theft of electricity has been found and the petitioner has been said to have been apprehended from the premises in which the theft of electricity was taking place, as such there are ample materials in the present case which disclose commission of a cognizable offence, as against the petitioner herein, hence this is not a case which warrants exercise of inherent powers by this Court under Section 482 of the Cr.P.C. In the case of Bhajan Lal (supra), it has been held that quashing of a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. Another aspect of the matter is that the petitioner cannot be permitted to stifle a legitimate prosecution and if he is so sanguine about him not being guilty, he has a remedy of discharge under the Code of Criminal Procedure.

8. For the reasons stated hereinabove, I do not find any merit in the present petition and accordingly the same is dismissed, however, without any order as to costs.