

(2009) 08 JH CK 0067

In the Jharkhand High Court

Case No : Criminal M.P. No. 1414 of 2004

Ashish Kumar Jain

APPELLANT

Vs

The State of Jharkhand and Manoj Kumar Pandey

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Constitution of India, 1950 — Article 20
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 173, 190(1), 195
Electricity (Amendment) Act, 2007 — Section 15
Electricity Act, 1910 — Section 39, 44
Electricity Act, 2003 — Section 151, 153, 176
Electricity Rules, 2005 — Rule 12, 12(3)
Penal Code, 1860 (IPC) — Section 379, 419, 420, 467, 468

Citation : (2010) CriLJ 271 : (2010) 2 Crimes 314

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : M.S. Mittal, N.K. Pasari and S.K. Deo, for the Appellant; I.N. Gupta, APP for the State, Rajesh Shankar, D. Kumar and Abhay Prakash for the O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This application has been filed for quashing the FIR, in connection with Govindpur (Barwadda) P.S. Case No. 287 of 2004 dated 24.11.2004 under Sections 39 and 44 of the Indian Electricity Act, 1910 corresponding to G.R. No. 3805 of 2004 pending in the court of Chief Judicial Magistrate, Dhanbad.

2. It appears that on 24.11.2004 in the after noon, the committee, constituted by Electrical Superintending Engineer, Electrical Circle, Dhanbad, had conducted an inspection in the premises of M/s Ridhi Cement Company and found that C.T. Secondary Terminal which remain connected with the meter was short, because of that the Board was not able to calculate the actual consumption of energy, thereby the Board sustained loss of revenue to the tune of Rs. 2,00,000/-.

Accordingly, it is alleged that the consumer with dishonest intention to commit theft of electrical energy had shortened the said terminal.

3. It appears that on the basis of aforesaid information, police instituted Govindpur (Barwadda) P.S. Case No. 287 dated 24.11.2004 and took up investigation.

4. It is submitted by Sri M.S. Mittal, learned Counsel for the petitioner, that prior to amendment of Section 151 of the Indian Electricity Act, 2003 the court have no power to take cognizance of offence committed under Indian Electricity Act, 2003 on the basis of police report submitted before it u/s 173 of the Code of Criminal Procedure. Under the said circumstance, the lodging of FIR in the instant case is wholly without jurisdiction. It is submitted that the said amendment in the Indian Electricity Act, 2003 is prospective in nature, because the petitioner has vested right to be tried as per the procedure laid down in the Indian Electricity Act, as it exist prior to amendment. It is further submitted that Section 151 of the Indian Electricity Act, put a bar on the court from taking cognizance of the offence except on the basis of complaint filed by the authority mentioned in that section. Thus the registration of FIR is an abuse of the process of law, because the court could not take cognizance on the basis of charge sheet submitted by the police. Accordingly, it is submitted that the entire criminal proceeding arose from the aforesaid FIR be quashed.

5. On the other hand, Sri Rajesh Shankar, appearing for the O.P. No. 2, submits that Section 151 of the Electricity Act, 2003 lays down the procedure for taking cognizance of the offences committed under the aforesaid Act. He further submits that the accused persons have no vested right to claim that they should be tried by a particular procedure. It is further submitted that it is well settled that the amendment in procedure will operate retrospectively and will apply in all pending cases. It is further submitted that even assuming, not admitting, that the amendment made in Section 151 of the Electricity Act 2003 will apply prospectively then also there is no illegality in institution of present FIR. It is submitted that Section 151 of the Electricity Act put an embargo on the power of court from taking cognizance on the basis of charge sheet submitted by the police. The said section does not put any bar on the power of police to investigate the case committed under Indian Electricity Act, 2003 or Indian Electricity Act, 1910, because the offence of theft of electrical energy is a cognizable offence. It is submitted that the police have power to investigate the said cognizable offence without the permission of court as per the provision contained u/s 156 of the Cr.P.C. Accordingly, it is submitted that there is no illegality in institution of FIR by the police.

6. To appreciate the points arose in this case for determination, it is necessary to quote the un-amended provisions of Section 151 of the Indian Electricity Act, 2003, which is as follows:

151. Cognizance of offences: No court shall take cognizance of an offence

punishable under this Act except upon a complaint in writing made by appropriate government or appropriate Commissioner or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or Licensee or the generating company, as the case may be, for this purpose.

From bare perusal of aforesaid provisions, it appears that the same prescribed the procedure for taking cognizance of the offences committed under the Indian Electricity Act. It further appears that as per Section 151 of the Electricity Act, 2003 the court had power to take cognizance only on the basis of complaint in writing filed by appropriate government or appropriate Commissioner or any of their officer authorized by them or a Chief Electrical Inspector or a Electrical Inspector or Licensee or the generating company, as the case may be, for this purpose.

7. It is not out of place to mention that in the year 2005, the Central Government framed Rules u/s 176 of the Electricity Act, 2003, called Electricity Rules, 2005. From perusal of Rule 12 of the Electricity Rules, it appears that there is provision in it that the police can also take cognizance of the offences punishable under the Act on a complaint filed by appropriate authority and investigate the case. It is also provided that for the purpose of investigation the police have all the powers available under the Code of Criminal Procedure. Sub-rule (3) of Rule 12 further provide that police shall, after investigation, forward the report along with the complaint to the Court for trial. It appears that some confusion arose as to whether the Rule making authority can enlarge the power of court for taking cognizance of the offence on the basis of police report.

8. It appears that Principal Indian Electricity Act, 2003 amended by Electricity (Amendment) Act, 2007 and apart from other amendments Section 151 of the Act was also amended for the following object & reason:

As per the provisions contained in Section 151 of the Act, the offences relating to the theft of Electricity, electric lines and interference with meters are cognizable offences. Concerns have been expressed that the present formulation of Section 151 stands as a barrier to investigation of the cognizable offences by the police. It is proposed to amend Section 151 so as to clarify the position that police would be able to investigate the cognizable offences under the Act.

9. Section 15 of Electricity (Amendment) Act 2007, by which Section 151 of Principal Electricity Act, 2003 has been amended runs as follow:

15. Amendment of Section 151 -In Section 151 of the Principal Act, the following provisos shall be inserted, namely:

Provided that the court, may also take cognizance of an offence punishable under this Act upon a report of a police officer filed u/s 173 of Criminal Procedure Code, 173 (2 of 1974).

Provided further that a special court constituted u/s 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.

10. Now the point for consideration is that the provisions of Electricity (Amendment) Act, 2007, which came into force w.e.f. 15th June, 2007, would apply retrospectively in all pending proceedings. As stated by Lord Denning: The rule that an Act of Parliament is not given retrospective effect applies only to statutes which affect vested rights. It does not apply to statutes which only alter the form of procedure or the admissibility of evidence, or the effect which the court give to evidence see *Blyth v. Blyth* (1966) 1 All ER 524.

11. As per Maxwell Interpretation of Statutes 11th Edition p216

No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to altered mode.

12. It has been held by their Lordship of Supreme Court in union of india (UOI) Vs. Sukumar Pyne, that:

In our opinion, there is force in the contention of learned Solicitor General. As observed by this Court in *Rao Shiv Bhadur Singh v. State of Vindhya Pradesh* a person accused of the commission of the offence has no vested right to be tried by a particular court or a particular procedure except in so far as there is any Constitutional objection by way of discrimination or the violation of any other fundamental right is involved. It is well recognized that no person has a vested right in any course of procedure (Vide Maxwell 11th Edition P216), and we see no reason why this ordinary rule should not prevail in the present case. There is no principle underlying Article 20 of the Constitution which makes a right to any course of procedure a vested right.

13. In *State of Madras Vs. Lateef Hamid and Co.*, their Lordship of Supreme Court had held that it is well settled that the new procedure prescribed by law governs all pending cases.

14. In *Zile Singh Vs. State of Haryana and Others*, Hon''ble Supreme Court at para "14" held that:

14 ...If new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended....

15. As noticed above, Section 151 of the Electricity Act prescribed the procedure by which the cognizance of the offence committed under the Indian Electricity Act can be taken. Thus the petitioner has no vested right to claim that court should take cognizance of offence in accordance with particular procedure. It is further clear from the object of amendment that Section 151 of the Principal Electricity Act, has been amended, with a view to clarify the doubt and explain

the original Act. Since the amendment of Section 151 of the Electricity Act, 2003 is purely procedural in nature and enacted with a view to clear up doubts and explain the Principal Act, therefore, in view of aforesaid settled law the same would apply retrospectively in all the pending cases.

16. In view of my aforesaid finding that the amendment in Section 151 of the Electricity Act will operate with retrospective effect and governs all pending cases, the institution of present FIR by the police is consonance to the law, as such, there is no illegality in it.

17. Even otherwise, in my view, the police have power to investigate the theft of electrical energy by instituting an FIR. It is not in dispute that the offence of theft of electrical energy is a cognizable offence. Thus as per Section 154 and 156 of the Code of Criminal Procedure, the police have power to institute and investigate a cognizable offence without any sanction from judicial authority. Section 151 of the Electricity Act, 2003 does not control or put a ban on the power of police to investigate a cognizable offence under the Criminal Procedure Code. From plain reading of Section 151 of the Electricity Act, it appears that it only put an embargo on the power of court from taking cognizance except upon a complaint in writing made by authority enumerated in that section.

18. It is relevant to mention that the provision as contained in Section 195(1) of the Code of Criminal Procedure is similar to the provisions contained in Section 151 of the Electricity Act, 2003. Section 195 of the Criminal Procedure Code also put an embargo on the power of court from taking cognizance of the offences, mentioned in that section, except on the complaint in writing by a court, where the offence committed. While dealing with similar argument arose in a case u/s 195(1) of Cr.P.C. their Lordship of Supreme Court in State of Punjab Vs. Raj Singh and Another, had held as follows:

We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondents alleging commission of offences under Sections 419, 420, 467 and 468 IPC by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii) CrPC. prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 CrPC it is manifest that it comes into operation at the stage when the court intends to take cognizance of an offence u/s 190(1) CrPC; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding in court. In other words, the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 195 CrPC....

Thus, I am of the view that the aforesaid law laid down by Hon"ble Supreme Court will apply in the present case.

19. The judgment of Hon"ble Calcutta High Court in Ranjit Kumar Bag v. State of

West Bengal reported in (2006) 1C Cr.LR (Cal) 334 which has been relied upon by petitioner, also supports my aforesaid view. It has been held by their Lordship at paragraph 8 that:

The Electricity Act, 2003 (hereinafter referred to as "the Act",) does not seem to contain any provision which stands in the way of police authority in initiating investigation of a case disclosing cognizable offence....

20. Another judgment of Calcutta High Court in Biswanath Patra Vs. Divisional Engineer (E) S and LP and State, on which learned Counsel for the petitioner put much reliance, have no application in the facts of this case. In that case the magistrate has taken cognizance on the basis of charge sheet submitted by the police and order taking cognizance has been challenged in that case. In the instant case the petitioner came to this Court for quashing the FIR, Thus the aforesaid judgment has no help to the petitioner.

21. The learned Counsel for the petitioner had also relied upon a judgment of Punjab and Haryana High Court reported in 2007 (Cr.L.L) 429. In that case the question involved was also different from the present case. In the case before the Punjab & Haryana High Court the question was "when there is specific special law covering the question of theft of electricity then the general law contained in Section 379 of the IPC will apply?" Their Lordship after considering the judgment of Hon"ble Supreme Court in Avtar Singh Vs. State of Punjab, had come to the conclusion that general law have no application. Aforesaid question not involved in this case for determination. Hence the aforesaid judgment has no application in the facts of this case.

22. In view of the discussion made above, I find that insertion of first proviso in Section 151 of the Electricity Act, 2003, by amending Act 2007 is procedural in nature and therefore will apply retrospectively to all pending cases. I further find that the provisions contained in Section 151 of the Electricity Act, 2003, even prior to its amendment, does not control or circumscribe the power of police from instituting and investigating the cognizable offences under the Electricity Act.

23. In the result, I find no merit in this application, the same is accordingly, dismissed.