

(2008) 01 JH CK 0058
In the Jharkhand High Court

Dasrath Prasad Agrawal

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 300, 482
Electricity Act, 1910 — Section 39, 44
Electricity Act, 2003 — Section 152, 185
Penal Code, 1860 (IPC) — Section 379

Citation : (2008) 2 JCR 394

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner by invoking the inherent jurisdiction of this Court u/s 482, Cr PC has prayed for the quashment of the entire criminal proceeding, including the order impugned dated 12.9.2000 whereby cognizance of the offence was taken u/s 379, IPC as also under Sections 39/44 of the Indian Electricity Act against him in Ramgarh P.S. Case No. 119 of 2000 corresponding to G.R. No. 966 of 2000 pending in the Court of Sri Amresh Kumar, Judicial Magistrate, 1st Class, Hazaribagh in T.R. No. 578 of 2006.

2. The prosecution story in short was that the informant Assistant Electrical Engineer, Electric Supply, Sub-Division, Ramgarh O.P. No. 2 herein in conducting series of raids visited also the factory of the petitioner at Naisarai on 19.5.2000 at Ramgarh and spotted theft of electricity by hooking P.V.C. wires. It was further alleged that though there were two consumer lines vide NSL 3640 and NSL 4079 in the factory for domestic purpose, which were already disconnected earlier. The petitioner had not paid the arrear bills due to him of the Electricity Board. It was alleged that on account of theft of power on the instance of the petitioner, in his domestic connection, the Electricity Board suffered loss of Rs. 16,000/-. The raiding party seized the P.V.C. wires and prepared seizure list.

3. Mr. M.K. Dey, learned Counsel for the petitioner submitted that on the face of the special statute vide Electricity Act, 2003 the petitioner cannot be prosecuted under general law for the offence u/s 379, IPC. The Electricity Act is self-contained which also deals with the theft of power and in the amended Electricity Act, 2003 Section 152 provides compounding of offences, if the loss made to the Electricity Board is compensated and in the instant case, admittedly, the petitioner has compensated the Electricity Board by making payment of entire dues including the loss allegedly sustained by the Electricity Board to the tune of Rs. 16,000/-. The Xerox copy of the payment receipt of the bill at page 18 is in respect of connection No. NSC 4079 which discloses that a sum of Rs. 39040/- was deposited with the Electrical Executive Engineer, Electric Supply, Sub-Division, Ramgarh Cant, Ramgarh on 9.6.2000.

4. On the point of law Mr. Dey submitted that Section 152 of the Electricity Act, 2003 deals with compounding of offences which runs thus:

Compounding of offences.--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence.

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates.

5. Mr. Mukesh Kumar, learned Counsel appearing on behalf of the Opposite Party No. 2 opposed the contention advanced on behalf of the petitioner by submitting that the offence was committed in the year 2000 before the new Act came into being by introduction of Section 152, Electricity Act which deals with compounding of offences and therefore, the defence of the petitioner cannot sustain for the quashment of the criminal prosecution as such provision was not available in the Old Act in the year 2000.

6. Mr. M.K. Dey, learned Counsel by way of reply submitted that Section 185 of the Electricity Act, 2003 deals with repeal and saving clauses which speaks:

Repeal and saving.--(1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (51 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.

(2) Notwithstanding such repeal,-

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorization or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not

inconsistent with the provisions. of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

7. Mr. Dey, concluded his argument by submitting that a counter-affidavit has been filed in this case and the Opposite Party No. 2 is silent about the application of the New Electricity Act, 2003 in view of Section 185 of the Electricity Act, 2003 which repeals the earlier enactment as referred to hereinabove. Mr. Mukesh Kumar, learned coun-seltor the J.S.E.B. very fairly submitted that the petitioner has compensated by depositing the loss sustained to the Electricity Board and other dues.

8. Having regard to the facts and circumstances of the case, I find that the Electricity Act, 2003 bears the provisions of compounding of offences as contained in Section 152, Electricity Act, 2003 and Section 185 of the said Act contains saving and the repeal of the certain provisions of the Old Act as referred above. The effect of the compounding of the offence according to the provisions of Section 152(2)(3) of the Electricity Act, 2003 are that:

On payment of the sum of money in accordance with Sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any Criminal Court.

The acceptance of the sum of money for compounding an offence in accordance with Sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of Section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

In view of that provisions of law, the criminal prosecution initiated against the petitioner including the cognizance of the offence taken against him is quashed and this petition is allowed.