

(2016) 02 PAT CK 0033

In the Patna High Court

Case No : Criminal Miscellaneous No. 25005 of 2013 (Arising Out of PS.Case No. -87 Year-2013 Thana-Barbigha District-Sekhpura)

Devendra Kumar

APPELLANT

Vs

The State of Bihar and another

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Electricity Act, 2003 — Section 135, 138, 151
Penal Code, 1860 (IPC) — Section 379

Citation : (2016) 2 ECrc 478

Hon'ble Judges : Chakradhari Sharan Singh, J.

Bench : Single Bench

Advocate : Anand Kumar Ojha, A.S.C, Asha Devi, A.P.P., for the Respondent

Final Decision : Dismissed

Judgement

1. Chakradhari Sharan Singh, J. (Oral)- Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.
2. This application has been filed under Section 482 of the Code of Criminal Procedure for quashing of the First Information Report vide Barbigha P.S. Case No. 87 of 2013, disclosing offences punishable under Section 379 of Indian Penal Code and Sections 135 and 138 of the Electricity Act.
3. The said First Information Report came to be lodged on the basis of written information to the Police by the Assistant Electrical Engineer, Electricity Supply Division, Seikhpura with the allegation that the accused persons named in the First Information Report had committed offences punishable under Sections 135 and 138 of the Electricity Act and Section 379 of the Indian Penal Code.
4. Allegedly, the petitioner and other accused persons were found indulging in tapping of electricity from low tension connection with the help of a hook.
5. Learned counsel appearing on behalf of the petitioner has referred to Section

151 of the Electricity Act, 2003 in order to contend that the Assistant Electrical Engineer, Electric Supply Division, Seikhpura did not have any authority to conduct the said search or lodge the First Information Report. According to him, the said provision empowers only authorised Officers/Chief Electrical Inspector/Electrical Inspector to file a complaint petition on the basis of which only cognizance can be taken. He has submitted that on the basis of a report of the Assistant Electrical Engineer, Electricity Supply Division, Seikhpura, which is the foundation for registration of the First Information Report, cognizance of offence cannot be taken on the basis of police report, in the light of bar under Section 151 of the Electricity Act, 2003. He has also submitted that a copy of the seizure list was not handed over to the petitioner and the seizure was thus, not made in accordance with law. On this ground also, he contends that the First Information Report needs to be quashed.

6. Mr. Anand Kumar Ojha, learned counsel appearing on behalf of the North Power Distribution Company Limited has, per contra, submitted that the offences under Sections 135 and 138 of the Electricity Act are cognizable as is evident From Section 151B of the Electricity Act, 2003. He has further submitted that in view of the proviso to Section 151A of the Electricity Act, 2003, cognizance can be taken on the basis of a police report also and if the police submits or has submitted charge-sheet on the basis of material collected during investigation, after having entertained the written report of the Assistant Electrical Engineer, Electricity Supply Division, Seikhpura, the cognizance of offence by a court to be barred or cannot be said to be incompetent or otherwise illegal.

7. Section 151 of the Electricity Act, 2003 reads as under:-

"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 Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may, for this purpose:

[Provided that the Court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973(2 of 1974):<thorn;>

Provided further that a Special Court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.]"<thorn;>

8. Section 151A and 151B of the Act are also relevant, which are being reproduced hereinbelow:-

"[151-A. Power of police to investigate.- For the purposes of investigation of an offence punishable under this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973 (2 of 1974).

151-B. Certain offences to be cognizable and non-bailable.- Notwithstanding

anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sections 135 to 140 or section 150 shall be cognizable and non-bailable.]"<thorn;>

9. Section 151 of the Act puts a bar on taking of cognizance of offence punishable under the Act except upon a complaint, in writing, made by the persons authorised therein. Proviso to Section 151 of the Act makes it abundantly clear that a Court can also take cognizance for offence punishable under the Act upon a report of a police officer filed under Section 173 of the Code of Criminal Procedure, 1973. Further Mr. Ojha is right in his submission offences in question punishable under Sections 135 and 138 of the Act have been made cognizable and non-bailable.

10. I, therefore, do not find any substance in the submission made on behalf of the petitioner that no cognizance of the offence punishable under Sections 135 and 138 of the Act can be taken on the basis of report of a Police Officer, submitted under Section 173 of the Code of Criminal Procedure on the ground that the First Information Report was instituted at the instance of a person not authorised under Section 151 of the Electricity Act, 2003. First proviso to Section 151 of the Act allows a Court to take cognizance upon report of a police officer. Provisions under Sections 151A and 151B also defeat the plea taken on behalf of the petitioner.

11. Secondly, on the basis that there had been irregularity in seizure, a First Information Report cannot be quashed. It is only in course of trial when this matter can be raised by the party concerned.

12. It has also been argued on behalf of the petitioner that the length of the wire seized by the officials of the Company has been found to be 15 meters; whereas, the distance between the petitioner's shop and the transformer is not less than 40 feet.

13. This is a question of fact which is not required to be gone into in a proceeding under Section 482 of the Code of Criminal Procedure for quashing of the First Information Report

14. I, therefore, do not find any merit in this application. This application is, accordingly, rejected.