
(2009) 05 PAT CK 0008

In the Patna High Court

Case No : Criminal Miscellaneous No. 19178 of 2007

Satyendra Rai @ Satyandar Kumar Rai @ Bajrang Wali

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Electricity Act, 1910 — Section 39, 44

Electricity Act, 2003 — Section 135, 138, 151, 152, 2

Citation : (2009) 3 PLJR 767

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Ajay Prasad, Dharmeshwar Mishra, for the Appellant; Mayanand Jha for the State, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The petitioner who is the sole F.I.R, named accused of Naubatpur P.S. Case No. 18 of 2007 registered under Sections 39/44 of the Indian Electricity Act, 1910 has prayed for the quashing of the First Information Report thereof and the entire proceeding initiated thereupon. It appears that a raiding party led by Vijay Kumar Singh, Assistant Engineer, conducted a surprise raid in the premises of the rice mill of the petitioner at about 12.30 P.M. on 24.1.2007 in Village-Dariyapur under Naubatpur Police Station and found a 5 H.P. motor running directly with electrical energy extracted from the main supply line illegally by attaching a hook. The petitioner is said to have fled on seeing the raiding party. It is claimed that by overt act of the petitioner, the Electricity Board had suffered a revenue loss of Rs. 60,000/-.

2. The Electricity Act, 1910 was repealed by the Electricity Act, 2003 which received the assent of the President on 26.5.2003 and came into force on 2.6.2003. Yet the officers of the Electricity Board notwithstanding the passage of almost four years after the old Act, 1910 had been repealed still continue to file written complaints under the old Act, of 1910. They also do not appear to be

aware of the fact that Section 151 of the Electricity Act, 2003 provides as follows:--

"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 other Officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee under the governing Company, as the case may be, for this purpose."

3. From Section 151 of the new Act, 2003, it is clear that a complaint has to be filed and no police case is maintainable.

4. Opposing the prayer for quashing of the F.I.R., it was submitted on behalf of the Electricity Board that by the overt act of the petitioner the Board has suffered huge revenue loss and, hence, the F.I.R. had been lodged and that Sections 39 and 44 of the Electricity Act, 1910, corresponds to Sections 135 and 138 of the Electricity Act, 2003 and there is provision for compounding the offences on payment of total amount alongwith penalty relating to theft of energy and tampering with the meter u/s 2 of the Electricity Act, 2003. On this premise it was submitted that the provisions of the new Act is applicable to the petitioner facing prosecution in a criminal proceeding for offence under the Electricity Act, 1910. It was further submitted that wrong reference to the section in the F.I.R, cannot be a matter for quashing the F.I.R, and hence, the application is premature and is fit to be dismissed.

5. The submissions advanced by the learned counsel for the Electricity Board may be true but will not apply to the facts and circumstances of the instant case.

6. The raid by the officials of the Electricity Board was conducted on 24.1.2007 when Electricity Act, 2003 had already come into force and the new Act u/s 151 of the Act provides that a complaint must be filed by the persons enumerated therein and no cognizance would be taken of an offence on the basis of a police case. Where the new Act statutorily provides the procedure as to how cases are to be lodged including those for theft of electricity, recourse cannot be taken to any other method.

7. The very inception of the case being not in accordance with law, the F.I.R. in the instant case cannot be sustained. In view of the discussions made above, the continuance of the proceeding against the petitioner amounts to an abuse of the process of the court since under new Act the consumer/accused in a case of - theft of electricity is given the liberty of compounding the of fences under the provisions of Section 152 of the Electricity Act, 2003, whereas there was no such provision under the Indian Electricity Act, 1910. In that view of the matter the First Information Report of Naubatpur P.S. Case No. 18 of 2007 is quashed and the application is allowed.