

(2008) 01 CAL CK 0088
In the Calcutta High Court
Case No : C.R.R. No. 3312 of 2005

Shri Anil Kumar Majumdar

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 09-01-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 251, 401, 482
Electricity Act, 2003 — Section 135

Citation : (2008) 2 CALLT 260

Hon'ble Judges : Kalidas Mukherjee, J

Bench : Single Bench

Advocate : T.K. Tiwari, Gobinda Kar and Prantick Ghosh, for the Appellant; R.S. Chattopadhyay and J.N. Chatterjee and Uttam Basak for Opposite Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Kalidas Mukherjee, J.—This application under Article 227 of the Constitution of India read with Sections 482, 401 of the Cr.PC has been filed by the present petitioner praying for quashing of the entire proceedings pending before the learned Judge, Special Court, Nadia at Krishnanagar, Fast Track Court, 1st Court-in-charge in Case No. I.E. 241 of 2004 corresponding to Nakashipara P.S. Case No. 185 of 2004 dated 02.08.2004 u/s 135 of the Electricity Act, 2003.

2. The case of the petitioner herein, in short, is that he has one small business unit viz. Ice-cream Factory bearing Service Connection No. A/4214/1. Consumer No. E-300063. The petitioner used to pay the amount of electric consumption bill regularly. The Station Manager of Bethuadahari Group Electric Supply called the petitioner to his office on 25.07.2004. Accordingly the petitioner met him in his office. The Station Manager demanded a sum of Rs. 20,000/- towards the subscription of Biswakarma Puja to be held in the office of the Bethuadahari Group Electric Supply. The petitioner expressed his inability to comply with such

demand. The petitioner out of his volition tendered Rs. 501/- as subscription of Biswakarma puja. But the Station Manager declined to accept the same. On 31.07.2004 at about 10.00 P.M. the Station Manager with some of his subordinate staff and the police personnel of Nakashipara Police Station reached the house of the petitioner and demanded Rs. 20,000/- for Biswakarma Puja. The petitioner refused to pay and then Electric Service Connection of the petitioner was cut off and the petitioner was threatened by the Station Manager of Bethuadahari Group Electric Supply. On 02.08.2004 one complaint was lodged by the Station Manager, Bethuadahari Group Electric Supply being Nakashipara P.S. Case No. 185 of 2004 dated 02.08.2004 u/s 135 Electricity Act, 2003. The petitioner was served with the notice of provisional assessment for consumption of electricity charges. The petitioner filed a writ petition challenging the purported demand notice before the Hon"ble High Court. As the petitioner was suffering much for want of electricity, he had deposited Rs. 47,127/- with the West Bengal State Electricity Board. The Hon"ble High Court had been pleased to quash the notice of provisional assessment and also directed the West Bengal State Electricity Board to adjust the amount paid by the petitioner with future consumption bills. It was held by the Hon"ble Court that the seizure list was doubtful. Being dissatisfied with the order of the learned single Judge of this Hon"ble Court, the West Bengal State Electricity Board preferred an appeal before the Hon"ble Division Bench. After completion of investigation, the police submitted charge sheet on 01.09.2004 and the case is now pending at the stage of recording plea of the accused u/s 251 Cr.PC. Under the circumstances, the petitioner has prayed for quashing of the entire proceedings pending before the learned Judge, Special Court.

3. The learned Counsel appearing on behalf of the petitioner submits that in the seizure list there is no mention from whom the Articles were seized and the alleged seizure was made on 31.07.2004 and it was signed by the officer concerned on 02.08.2006 which raises strong suspicion as to the veracity of the alleged seizure. It is contended that there was animosity between the parties over the demand for donation in connection with the Biswakarma Puja and because of the inability of the petitioner to pay the demanded sum, the prosecution was falsely lodged against the petitioner. It is submitted that in the previous writ application the provisional assessment bill was set aside and taking cognizance on the basis of the Police Report was illegal. It is further contended that no material was seized on the basis of the alleged seizure. Under the circumstances, the learned Counsel submits that the entire proceedings pending before the learned Judge, Special Court should be quashed.

4. The learned Counsel appearing on behalf of the O.P. No. 2 submits that there was pilferage of electricity and the raid was conducted. It is submitted that because of the pilferage, assessment bill was raised and part payments have been made by the petitioner. As regards the alleged illegality in taking cognizance, it is submitted by the learned Counsel for the O.P. No. 2 that it has been decided by the learned single Judge of this Hon"ble Court in a number of

cases viz. CRR No. 1224 of 2007, CRR 2374 of 2007 as reported in (2007)2 CLR (Cal) 463 [Ajay Kumar Ghosh v. The State of West Bengal and Anr.] and CRR 4039 of 2006 that the amendment of 2007 of the Electricity Act is retrospective in effect and the question of taking cognizance cannot be reopened at this stage. It is further submitted that the evidentiary value of the seizure list will be assessed at the time of trial before the learned Judge, Special Court.

5. Mr. R.S. Chattopadhyay appearing on behalf of the State adopted the submissions made by the learned Counsel appearing on behalf of the O.P. No. 2.

6. At the very outset I find that the factum of challenge of the provisional assessment bill in the previous writ petition is a different aspect of the matter. In the instant application the question of maintainability of the criminal proceeding has been called in question and this point cannot be equated with the financial aspect involved in the matter.

7. As regards the retrospective operation of the Amending Act of 2007, it has been held by the learned single Judge of this Hon'ble Court in cases viz. CRR No. 1224 of 2007, CRR 2374 of 2007 as reported in (2007)2 CLR (Cal) 463 [Ajay Kumar Ghosh v. The State of West Bengal and Anr.] and CRR 4039 of 2006 that the amendment of 2007 will be retrospective in operation. Since the question of retrospective operation of the amendment of 2007 of the Electricity Act has been considered and decided in the aforesaid revisional applications, and the said point being involved in the instant case with similar facts and circumstances, I am inclined to rely on the aforesaid decisions of the learned single Judge of this Hon'ble Court I am of the considered view that the amendment of 2007 is retrospective in operation. With the coming into operation of this amendment, the question of legal infirmity in taking cognizance does not arise and it cannot be reopened at this stage.

8. As regards the prayer for quashing of the proceedings, the learned Counsel has assailed the seizure list and has urged the point of animosity between the parties over the claim for donation in connection with Viswakarma Puja. It is contended that while viewing the matter from this angle of vision, it would appear that the case has been falsely lodged against the petitioner.

9. Having heard the submissions of the learned Counsels of both sides and on perusal of the materials on record, I find that the points as raised by the learned Counsel of the petitioner should be decided at the time of trial. At this stage I find that there is no ground to interfere in revision.

10. In the result, the application fails and the same is accordingly dismissed with no order as to costs. Interim order, if any, stands vacated.

11. Let a copy of this order be sent to the learned Court below immediately.

12. Urgent Xerox certified copy, if applied for, be handed over to the parties as early as possible.