

(2009) 05 JH CK 0047
In the Jharkhand High Court

Shri Dinesh Sonthalia and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 18-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 135, 136, 137, 138, 139
Electricity Act, 2003 — Section 135, 136, 137, 138, 139
Penal Code, 1860 (IPC) — Section 379

Citation : (2009) 05 JH CK 0047

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—These three quashing applications were taken up together and are being disposed of this common order as the subject matter of the dispute involved in these three petitions is the same and similar and the question of law involved are also the same.

2. In Cr.M.P. No. 118 of 2007, the two petitioners of M/s Himadri Steel have filed this application for quashing of the FIR of Chakulia P.S. Case No. 06/2007, registered against them at the instance of Manmohan Kumar, the Assistant Electrical Engineer, Electric Supply Division, Chakulia for the alleged commission of the offence under Sections 135, 136 and 138 of the Indian Electricity Act, 2003 read with Section 379 of the Indian Penal Code for the alleged theft of electrical energy causing loss to the Electricity Board to the tune of Rs. 6 Crores.

3. The two petitioners in Cr. M.P. No. 119 of 2007 are the Directors of M/s Sukh Sagar Metals Pvt. Limited and against them the F.I.R. has been lodged by the Assistant Electrical Engineer being Chakulia P.S. Case No. 08/2007 for the alleged commission of the offence under Sections 135, 138 and 139 of the Indian Electricity Act, 2003 for committing theft of electrical energy causing loss to the Electricity Board to the tune of Rs. 6 Crores.

4. In Cr.M.P. No. 120 of 2007, the petitioner being the owner of M/s ABN Instrument Pvt. Limited and he has been arrayed as an accused in Dhalbhumgarh P.S. Case No. 02/2007, which was registered u/s 135 of the Indian Electricity Act, 2003 read with Section 379 of the Indian Penal Code at the instance of the Assistant Electrical Engineer for commission of the offence of theft of electrical energy causing loss to the Board to the tune of Rs. 35,00,700/-.

5. In all the three petitions the prayer has been made to quash the FIR lodged against them mainly on the following grounds:

(i) The institution of the FIR against the petitioners is illegal and bad in law in view of the fact that for the allegations as made in FIR, no FIR can be registered since Section 151 of the Indian Electricity Act, 2003 stipulates that only a complaint in writing can be lodged before a competent court of law and that too by an appropriate Government or the authorized officers of the appropriate Government but in the present case, in place of lodging complaint before a competent Court, an FIR has been instituted at the instance of a person, who is neither the appropriate Government nor is the officer authorized by the appropriate Government.

(ii) The power of police to investigate a case under the Indian Electricity Act, 2003 has been vested only after amendment in the year 2007, i.e. by Electricity (Amendment) Act, 2007, u/s 151A, which came into effect on and from 29/05/2007, whereas, in the present case the first information reports were lodged and registered in the Month of January 2007, i.e. prior to coming into force of the Electricity (Amendment) Act, 2007 and, as such, the institution of the FIR by the police at the instance of a person, who was not authorized under the law, is bad in law and, therefore, are liable to be quashed.

6. In support of their submissions, the learned Counsel appearing for the petitioners relied on the decisions of a Single Judge of Calcutta High Court in the case of Biswanath Patra Vs. Divisional Engineer (E) S and LP and State, ", and the Case of "Ranjit Kumar Bag v. State of West Bengal, reported in (2006) 1 C Cr.LR (Cal) 334" and a decision of Punjab & Haryana High Court in the case of Mahalakshmi Spinners Ltd. and Others Vs. State of Haryana and Another, .

7. On the other hand, it is submitted on behalf of the opposite parties that the Central Government framed Rules in the year 2005 as Electricity Rules 2005 and according to the Rule 12, the police can take cognizance of the offence punishable under the Act on a complaint in writing made to the police by the authorities mentioned in the Rules and the police has all the powers of the Criminal Procedure Code for the purpose of investigation of the complaint and, therefore, as per the Electricity Rules, which came into force in the year 2005, i.e. prior to the lodging of the FIR in these three cases, the police has ample power to register and investigate the case on a complaint made before it by a competent officer duly authorized under the Rules and in the present three cases the informants were fully authorized to lodge a complaint before the police in

view of Rule 12 of the Electricity Rules 2005.

8. Section 151 of the Indian Electricity Act, 2003 reads 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 Commission 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:

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 the Code of Criminal Procedure, 1973 (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.

9. After the amendment as made by Electricity (Amendment) Act, 2007, in the year 2007 the first proviso mentioned above was added by which it is stipulated 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 the Code of Criminal Procedure, 1973 (2 of 1974)

10. Section 151A was also inserted by way of aforesaid amendment in the year 2007 giving power to the police to investigate. u/s 151A, it has been stipulated that:

for the purpose 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).

11. Reliance has been placed by the opposite parties on a decision of the Chhatisgarh High Court in the case of "Chhatisgarh State Electricity Board V. Vishal Agrawal and Ors. reported in 2008 (2) Crimes 295 (Chh)" and the decision of the Supreme Court in the case of Zile Singh Vs. State of Haryana and Others, ". .

12. It is significant to note that prior to the amendment made in the Electricity Act in 2007, Electricity Rules were framed in 2005 itself by Electricity Rules 2005 which came into force on 08/06/2005 and Rule 12 of the said Rules gives ample power to the police to investigate on a complaint in writing made to the police by the Appropriate Government or Appropriate Commission or any of their officer authorized by them in this regard or a Chief Electrical Inspector or an Electrical Inspector or an authorized officer of licensee or generating company as the case may be. For ready reference Rule 12 is quoted herein below:

12. Cognizance of the offence.-(1) The police shall take cognizance of the offence punishable under the Act on a complaint in writing made to the police by the

Appropriate Government or the Appropriate Commission or any of their officer authorized by them in this regard or a Chief Electrical Inspector or an Electrical Inspector or an authorized officer of licensee or a Generating Company, as the case may be.

(2) The police shall investigate the complaint in accordance with the general law applicable to the investigation of any complaint. For the purposes of investigation of the complaint the police shall have all the powers as available under the Code of Criminal Procedure, 1973 (2 of 1974).

(3) The police shall, after investigation, forward the report along with the complaint filed under Sub-clause (1) to the Court for trial under the Act.

(4) Notwithstanding anything contained in Sub-clauses (1),(2) and (3) above, the complaint for taking cognizance of an offence punishable under the Act may also be filed by the Appropriate Government or the Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or an authorized officer of licensee or a Generating Company, as the case may be, directly in the appropriate Court.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every special Court may take cognizance of an offence referred to in Sections 135 - 139 of the Act without the accused being committed to it for trial.

(6) The cognizance of the offence under the Act shall not in any way prejudice the actions under the provisions of the Indian Penal Code (45 of 1860).

13. On a bare perusal of Section 151 of the Indian Electricity Act, it is crystal clear that Section 151 of the Electricity Act puts a bar in taking cognizance by a Court of an offence punishable under this Act except upon a complaint in writing made by the Appropriate Government or Appropriate Commission or any of their officer authorized by them but it does not bar the lodging or registration of an FIR on the basis of a complaint made to the police by a person authorized under the Act. As a matter of fact Rule 12 of the Electricity Rules 2005, which came into force on 08/06/2005, clearly empowers the police to register an FIR and investigate the case. In any view of the matter, the stage of taking cognizance has not reached as yet in these three cases. It appears that no sooner the FIR were registered by the police, the petitioners approached this Court for quashing the First Information Reports. It can very well be said that these three petitions for quashing are premature since the stage of taking cognizance has not reached as yet. The stage of cognizance would reach only after the police submit its report u/s 173 Cr.P.C. after completion of the investigation.

14. So far as the point raised by the petitioners questioning the authority of the informant to lodge the FIR and the authority of the police to investigate a case on the basis of an FIR instituted prior to Electricity (Amendment) Act, 2007 came into force, I find that this point has already been decided by a Division Bench of this Court in the case of Dayal Steels Ltd. Vs. State of Jharkhand and Others, but

neither party cited this decision of the Division Bench of this Court. Paragraphs 13 to 18 of the judgment of the Division Bench of this Court in the above case is a complete answer to the points raised by the petitioners, which are quoted herein below:

13. The next question is, whether the respondent No. 7 had the authority to lodge the complaint by way of FIR against the appellant for theft of electricity? On this question also, the appellant lays much stress on the provisions of Section 135(1A) of the Electricity Act and would argue that it is only such officer of the licensee who is above the rank of the officer authorized by the Appropriate Commission.

14. It may be noted here that as per Section 151B of the Electricity Act, 2003, the offences punishable under Sections 135 - 140 or Section 150 shall be cognizable and non-bailable.

15. Section 151A gives power to police to investigate and lays down that the police officer shall have all the powers to investigate all the offences punishable under the Act, as provided in Chapter-XII of the Code of Criminal Procedure, 1973.

16. Rule 12 of the Electricity Rules 2005 provides for cognizance of the offence and reads as under:

12. Cognizance of the offence.-(1) The police shall take cognizance of the offence punishable under the Act on a complaint in writing made to the police by the Appropriate Government or the Appropriate Commission or any of their officer authorized by them in this regard or a Chief Electrical Inspector or an Electrical Inspector or an authorized officer of licensee or a Generating Company, as the case may be.

(2) The police shall investigate the complaint in accordance with the general law applicable to the investigation of any complaint. For the purposes of investigation of the complaint the police shall have all the powers as available under the Code of Criminal Procedure, 1973 (2 of 1974).

(3) The police shall, after investigation, forward the report along with the complaint filed under Sub-clause (1) to the Court for trial under the Act.

(4) Notwithstanding anything contained in Sub-clauses (1),(2) and (3) above, the complaint for taking cognizance of an offence punishable under the Act may also be filed by the Appropriate Government or the Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or an authorized officer of licensee or a Generating Company, as the case may be, directly in the appropriate Court.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every special Court may take cognizance of an offence referred to in Sections 135 - 139 of the Act without the accused being committed to it for trial.

(6) The cognizance of the offence under the Act shall not in any way prejudice the actions under the provisions of the Indian Penal Code (45 of 1860).

Section 151 of the Electricity Act, 2003 provides for cognizance of the offences and 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 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 :

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 the Code of Criminal Procedure, 1973 (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.

17. From a conjunctive reading of the above noted provisions of law, it would be manifest that a complaint may be lodged with the police by an authorized officer of the licensee or a generating company and that cognizance of the offences can be taken by the Court upon a complaint in writing made either by any officer authorized by the Appropriate Government or Appropriate Commission or by a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be. The Court can also take cognizance of the offences punishable under the Act upon a report of the police filed u/s 173 of the Code of Criminal Procedure, 1973. The Act lays down for Constitution of Special Courts by the State Government for the trial of offences referred to in Sections 135 - 140 and Section 150 of the Act. However, Rule 11 of the Electricity Rules, 2005 provides the jurisdiction of the Courts other than the Special Courts and lays down that jurisdiction of such Courts shall not be barred till such time the Special Court is constituted under subsection (1) of Section 153 of the Act.

18. Since the Act and Rules thereunder provide for the power of Courts to take cognizance of the offences punishable under the Act upon a written complaint made by the licensee or any representative of the licensee and also upon police report submitted u/s 173 of the Cr.PC, it cannot be said therefore that the FIR lodged by the respondent No. 7 in his capacity of being a representative of the licensee namely the Corporation, is without authority. Information relating to a cognizable offence can certainly be lodged with the police in order to set the law into motion. As to whether the respondent No. 7 being the authorized representative of the corporation is an officer of the rank higher than the rank of such officer authorized by the Appropriate Commission, it would again be a matter of evidence and proof which may be considered by the Appropriate Court at the time of taking cognizance of the offences. The investigation into the allegation made in the FIR does not call for interference at this stage.

15. Therefore, it appears that the points raised by the petitioners in these three quashing applications are fully covered by the judgment of the Division Bench of this Court in "M/s Dayal Steels Ltd (supra) wherein after discussing and considering Section 151, 151A, 151B of the Electricity Act, 2003 as amended and Rule 12 of the Electricity Rule 2005, it has been held that the Electricity Act, 2003 and the Electricity Rules 2005, empowers the Court to take cognizance of the offence punishable under the Act upon written complaint made by the licensee or the representative of the licensee and also upon a police report submitted u/s 173 of the Code of Criminal Procedure. It has also been held that the FIR lodged by a person being a representative of the licensee cannot be said to be without authority. The facts as to whether the informant was authorized representative of the corporation would be a matter of evidence and proof, which may be considered by the Appropriate Court at the time of taking cognizance of the offence. The investigation into the allegations made in the FIR on the aforesaid ground cannot be called for, for interference.

16. Since the points raised by the petitioners have been fully answered by the Division Bench of this Court in the case of "M/s Dayal Steels Ltd (supra) and, therefore, I do not think it necessary to discuss and comment on the decisions of Calcutta High Court and Punjab & Haryana High Court, cited on behalf of the petitioners. However, I am tempted to say that in these decisions the Electricity (Amendment) Rules 2005, particularly Rule 12 was not at all taken into consideration.

Accordingly, all these three applications have got no merit and, as such, the same are hereby dismissed.