
(2010) 03 MP CK 0034

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1319 of 2009

S.R. Poltry Farm through Shoukat Ali Rehmat Ali and Others	APPELLANT
Vs	
M.P.W.R.E.C. Ltd.	RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100, 100(8)
Electricity Act, 2003 — Section 135, 135(2), 150, 151
Penal Code, 1860 (IPC) — Section 187

Citation : (2010) 4 MPHT 416

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.K. Mody, J.—This is a petition for quashment of order dated 21-4-09 passed by Special Judge (Electricity), Ratlam in Special Case No. 56/09, whereby the case has been registered against the Petitioners for an offence alleged to have been committed u/s 135 of Electricity Act.

2. Short facts of the case are that the Respondent filed a private complaint before the learned Special Judge, Ratlam against the Petitioner for an offence alleged to have been committed u/s 135 of Electricity Act alleging that the Petitioner No. 1 is having industrial power connection bearing No. 91-03-657396. It was alleged that from the premises where the connection was installed Petitioner No. 1 is running Poltry Farm in the name and style "M/s SR Poltry Farm". It was alleged that on 18-3-09 upon inspection it was found that Petitioner No. 1 has made arrangement by installing two way switch in such a manner so that the electrical meter (which shows the reading) works as per desire of Respondent No. 1. It was alleged that Appellants were stealing energy by using the said two way switch and the electricity which were being consumed was not recorded in the said meter. It was alleged that Panchnama was prepared on spot. It was alleged that Petitioner Nos. 3 and 4 were available on spot as

representative of Petitioner No. 1. It was alleged that both of them (Petitioner Nos. 3 and 4) refused to sign the Panchnama. It was further alleged that by stealing the energy Petitioners have committed an offence which is punishable u/s 135 of Electricity Act, 2003. It was prayed that after taking cognizance and also after framing of charge and recording of evidence, Petitioners be convicted. Upon the complaint filed by Respondent cognizance of the offence was taken by the learned Trial Court vide order dated 21-4-2009, against which present petition has been filed.

3. Learned Counsel for the Petitioners argued at length and submits that the impugned order whereby cognizance has been taken against the Petitioners is illegal, incorrect and deserves to be set aside. It is submitted that the complaint was filed by Sub-Engineer, who was not authorised to file the complaint as per Section 151 of Electricity Act. Learned Counsel placed reliance on a decision of this Court in the matter of Bapupuri Vs. Madhya Pradesh Vidyut Vitran Company Ltd., wherein complaint filed by Junior Engineer who was not authorised to file complaint, it was held that cognizance of the offence taken by the Trial Court is illegal and whole trial was without jurisdiction. Learned Counsel further submits that the electricity connection was in the name of Petitioner No. 1. It is submitted that Petitioner Nos. 2 to 4 are not connected with the offence in any manner. It is submitted that Petitioner Nos. 3 and 4 has been made accused because they refused to sign the Panchnama. It is submitted that even if the Petitioner Nos. 3 and 4 has refused to sign Panchnama, then too, it cannot be said that Petitioner Nos. 3 and 4 has committed an offence punishable u/s 135 of Electricity Act. It is submitted that if a person refuses to sign the Panchnama, then he commits an offence u/s 100, Code of Criminal Procedure and is liable to be prosecuted u/s 187, IPC. So far as Petitioner No. 2 is concerned, learned Counsel submits that even if the entire facts alleged in the complaint is taken to be true, then too, no offence is made out against the Petitioner No. 2. It is submitted that keeping in view the aforesaid position of law and the facts and circumstances of the case, petition filed by the Petitioners be allowed and the complaint filed by the Respondent be quashed.

4. Learned Counsel for Respondent submits that it is true that the complaint has been filed by Sub-Engineer, but he was authorised to file the complaint for which notification has been filed. It is submitted that the law laid down in the matter of Bapupuri (supra), is not applicable in the present case as in that case there was nothing on record to show that the Junior Engineer was authorised to file the complaint. It is submitted that Petitioner Nos. 2 to 4 were made accused as they were found on spot and were employee of Petitioner No. 1. It is submitted that in the facts and circumstances of the case, petition be dismissed.

5. From perusal of the record it is evident that in the complaint filed by Respondent it was alleged that the complaint is being filed by Mr. Bhushan Kulkarni, Sub-Engineer who is authorised to file the complaint. Alongwith the complaint letter dated 31-3-09 issued by Sub-Engineer (Revenue) in favour of

Mr. Bhushan Kulkarni who is Respondent herein, is filed wherein it is mentioned that as per notification No. 2495-13-2004, dated 17-5-04 and the amended notification No. F-01-004/2007/thirteen, dated 11-9-07 Respondent is authorised to file the complaint against the Petitioners.

6. Notification dated 17-5-04 is on record. As per said notification Secretary (Department of Energy) in exercise of powers confirmed by Sub-section (2) of Section 135 of the c Act has authorised the Sub-Engineer to file the complaint. Notification dated 11-9-07 is also on record, whereby notification dated 17-5-04 is amended. Thus, keeping in view the aforesaid notification this Court is of the view that Mr. Bhushan Kulkarni, Sub-Engineer was duly authorised to file the complaint.

7. So far as law laid down in the matter of Bapupuri (supra) is concerned, in that case there was nothing on record to show that the Junior Engineer was authorised to file the complaint. As per Section 151, Electricity Act, Court shall take cognizance of the offence upon the complaint filed by any of the Officer authorised to file the complaint. Since the complaint has been filed by duly Authorised Officer of the Respondent, therefore, this Court is of the opinion that no illegality has been committed by teh learned Court below in taking cognizance of the offence.

8. It is true that as per documents annexed with the complaint petitioner Nos. 3 and 4 wer the persons who were available at the time of inspection and refused to sign Panchnama. As per Sub-section (8) of Section 100 of Code of Criminal Procedure any person who without reasonable cause refuses to attend and witness a search u/s 100, when called up to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence u/s 187 of IPC.

9. In the present case, as percomplaint petitioner Nos. 3 and 4 refused to sign the Panchnama but they have not been prosecuted because petitioner Nos. 3 and 4 refused to sign the Panchnama. On the contrary petitioner Nos. 3 and 4 have been prosecuted as they were found on spot and were representatives of petitioner No. 1 as petitioner Nos. 3 and 4 are employee of petitioner No. 1.

10. As per Section 150 of Electricity Act, any person who abets the offence is also liable for the same offence. So far as petitioner No. 2 is concened ther is absolutely nothing on record on the basis of which it can be said that petitioner No. 2 was also involved in the alleged offenc.

11. In the facts and circumstances of the case petition filed by the petitioners is allowed in part and the impugned order wherby cognizance of teh offence was taken is set aside to the extent whereby cognizance of the offence was taken against petitioner No. 2. Thus, the petitioner No. 2 stand discharge.

12. With the aforesaid observations, petition stands dispose of.