

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1013 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

Nand Kumar Vishwakarma @ Nand Kumar son of Sri Dev Narayan alias Dev Narayan Vishwakarma, resident of village- Shivpur, P.S.- Rani Talab Karp, District- Patna.

.... Petitioner/s

Versus

1. The South Bihar Power Distribution Company Ltd. through its C.M.D. Sandip Poundrik (Formerly Bihar State Electricity Board Baily Road, Patna.).
2. Sri S.K.P. Singh G.M., South Bihar Power Distribution Company Ltd. at Bidhut Bhawan Baily Road, P.S. Kotwali, District- Patna.
3. The Executive Engineer Electrical Division- 1, Bihta, P.O. and P.S.- Bihta, District- Patna.
4. The Assistant Electrical Engineer, Electrical Supply Sub-Division at and P.O. Parev, P.S.- Ranitalab Karp, District- Patna.
5. Sri Sonu Kumar son of not known, Junior Engineer Electric Supply Subdivision, Section-Parev, Bihta Division, District - Patna.
6. Sri Niraj Yadav son of not known, Junior Engineer Electric Supply Section-1, Bihta, District Patna.
7. Sri Rajendra Rai son of not known Skilled Khalasi, Bidyut Supply Section Parev under Bihta Division-1, District- Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Vijayeshwar Prasad, Advocate
: Mr. Shashank Shekhar Sinha, Advocate
For the Respondent/s : Mr. Anand Kumar Ojha, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

C.A.V.JUDGMENT

Date: 13 -02-2015

Heard Mr. Vijayeshwar Prasad, learned counsel appearing on behalf of the petitioner and Mr. Anand Kumar Ojha, learned counsel representing the South Bihar Power Distribution Company Limited and others.

2. The petitioner has filed this criminal writ application under Articles 226 and 227 of the Constitution of India seeking

quashing of the first information report of Rani Talab Karpa P.S. Case No.53 of 2013 for the offences punishable under section 379 of the Indian Penal Code (hereinafter referred to as “the Code) as well as sections 135 and 138 of the Electricity Act, 2003 (hereinafter referred to as “the Act”).

3. One Sonu Kumar, a Junior Engineer of the South Bihar Power Distribution Company Limited (hereinafter referred to as “the Company”) submitted his written report on 23rd July, 2013 at about 4 p.m. to the Officer-in-charge of Rani Talab police station, Patna on the basis of which the aforesaid police case was registered at 8 p.m. on 23rd July, 2013. According to the FIR in order to curb theft of electricity, a raid was conducted in the premises of the petitioner in village Shivpur under Rani Talab police station on 23rd July, 2013 at 4 p.m. and it was found that a welding machine was being operated directly with electrical energy extracted from the main supply line illegally by attaching a hook. A welding machine, a welding holder and pvc wire were seized by the raiding party from the premises of the petitioner. It has been alleged that on seeing the raiding party, the petitioner managed to escape from the place of occurrence. The aforesaid written report and the seizure list of the articles seized in the alleged raid were handed over to the police, pursuant to which the FIR in question was registered.

4. Learned counsel for the petitioner has submitted that the allegations made in the FIR are absolutely false and the petitioner has been implicated in the case with ulterior motive. He has submitted that in no case the ingredients of the offences punishable under sections 135 and 138 of the Act are attracted in the present case.

5. According to him, the FIR is also bad in view of the judgment of this Court in the case of **Satyendra Rai @ Satyandar Kumar Rai @ Bajrang Wali Vs. State of Bihar and Another since reported in 2009(3) PLJR 767** wherein it has been held that in view of section 151 of the Act only a complaint case be filed by the persons enumerated therein for the offences punishable under sections 135 and 138 of the Act and no cognizance can be taken of an offence on the basis of a police case. He has submitted that the Act statutorily provides the procedure as to how the cases are to be lodged in respect of theft of electricity and recourse cannot be taken to any other method. According to him, the very inception of the case by instituting the FIR in place of a complaint was not in accordance with law.

6. Lastly, it has been argued by the learned counsel for the petitioner in support of the prayer for quashing of the FIR is that even if the Company has power to institute an FIR through the various persons, such power was not vested in the Junior Electrical Engineers

as the Junior Electrical Engineers are not authorized under sub-section (1-A) of section 135 of the Act for lodging a complaint in the police station.

7. Per contra, Mr. Anand Kumar Ojha, learned counsel representing the South Bihar Power Distribution Company Limited, has submitted that the application filed by the petitioner is misconceived in law. He has submitted that apparently the allegations made in the first information report do constitute a cognizable offence. Hence, the police have jurisdiction to investigate the case. He has submitted that the law laid down by this Court in Satyendra Rai (supra) is no longer a good law as the judgment has been set aside by the Hon'ble Supreme Court in Criminal Appeal No.2133 of 2010. He has further submitted that the Junior Electrical Engineers of the Company have already been vested with jurisdiction by the Bihar Electricity Regulatory Commission under sub section (1-A) of section 135 of the Act for the purpose of disconnecting the supply line of electricity within their respective jurisdictions where theft of electricity is detected in the premises of low tension consumers and they have been made responsible for lodging a complaint in the police stations having jurisdiction in the matter.

8. I have heard learned counsel for the parties and have perused the materials on record.

9. In so far as applicability of the ingredients of the offences punishable under sections 135 and 138 of the Act are concerned, the objection raised by the learned counsel for the petitioner is misplaced. The allegations made in the FIR certainly constitute a cognizable offence. The word “cognizable offence” has been defined under section 2(c) of the Code of Criminal Procedure, 1973 which reads as under:-

“2(c). “cognizable offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.”

10. Section 151-B of the Act clearly mandates that an offence punishable under sections 135 to 140 or section 150 shall be cognizable. It reads as under:-

“ 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.”

11. Section 151-A of the Act confers powers to the police to investigate a case in the same manner as provided in Chapter XII of the Code of Criminal Procedure. It reads as under:

“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)”

12. I find that under Chapter XII of the Code of Criminal Procedure, section 154 empowers the police to register an FIR on receipt of an information relating to a cognizable offence and section 156 of the Code of Criminal Procedure mandates that any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. Section 156(2) of the Code of Criminal Procedure further mandates that no proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

13. Looking into the relevant provisions of the Act and the Code of Criminal Procedure, 1973 it is apparent that no illegality can be found in the action of the police in instituting an FIR and investigating the same.

14. Further, a perusal of the judgment of the Hon'ble Supreme Court in Assistant Electrical Engineer Versus Satyendra Rai & Anr. (Criminal Appeal No.2133 of 2010) would show that after



giving a thorough consideration to each and every aspect of the matter, the Hon'ble Supreme Court set aside the judgment of this Court in Satyendra Rai (supra) holding that the first information report is acceptable by the police and the police would investigate into the matter and submit a report under section 173 of the Code of Criminal Procedure. At this stage, I am tempted to re-produce the relevant extract of the operative part of the judgment of the Hon'ble Supreme Court in appeal against the order passed in the case of Satyendra Rai (supra) which reads as under:-

“12. Therefore, the High Court ought to have considered this provision which makes the first information report acceptable by the police in the sense that the police could investigate into the matter and if found guilty could have been also filed a report under Section 173 Cr.P.C. before the Court on which the Court could have taken the cognizance of the offence.

“13. Be that as it may, since the High Court has not considered both these provisions, we set aside the impugned order of the High Court holding that the first information report filed in the present case was liable to be investigated and a police report on that basis can be entertained by the criminal court by taking cognizance of the same.

“14. In that view, we allow this appeal and dismiss the petition filed before the High Court by respondent no.1 under section 482 Cr.P.C.”

14A. Thus, I find that the law laid down in Satyendra Rai's case (supra) is no longer a good law and the reliance placed upon

such judgment by the learned counsel for the petitioner is thoroughly misplaced.

15. I find no substance even in the point taken by the petitioner that Junior Engineers lack jurisdiction to lodge complaint before the police in respect of offences punishable under sections 135 and 138 of the Act. Suffice it to say in this regard that a copy of notification no.04 dated 31.05.2013 issued by the Bihar Electricity Regulatory Commission in exercise of powers conferred by sub section (1-A) of section 135 of the Act whereby the Junior Electrical Engineers have been empowered to disconnect electricity within their respective jurisdictions where theft of electricity is detected in the premises of low tension consumer and to lodge a complaint in the police station having jurisdiction within twenty four hours of disconnection.

16. Hence, I find that since 31st May, 2013 the Junior Electrical Engineers have been vested with power to lodge a complaint in the police station regarding theft of electricity. In the instant case, the FIR in question was registered on 23rd July, 2013 on the basis of a written report of the Junior Electrical Engineer. On the date of institution of the FIR, he was an authorized officer under the Act to launch prosecution by lodging a complaint in the police station.

17. For the reasons recorded, hereinabove, I find no merit in the present application. Accordingly, the writ application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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