

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42186 of 2012

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Raj Kishore Yadav @ Raj Kishore Singh S/O Late Nankaku Singh, resident
of village Aathar, Police Station Nawanagar, P.O. Athor, District Buxar

.... Petitioner/s

Versus

1. The State of Bihar
 2. The South Bihar Power Distribution Company Ltd. through Assistant
Electric Engineer, Electric Supply Sub-division, Dumraon, Buxar
- Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Brij Mohan Kumar Singh, Advocate

For the Opposite Party No.1 : Mr. Hirday Prasad Singh, APP

For the Opposite Party No.2 : Mr. Vinay Kirti Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 07-05-2015

Heard the parties.

2. The petitioner has filed the present application under Section 482 of the Code of Criminal Procedure, 1973 invoking inherent powers of this Court for quashing the order dated 13.08.2012 passed in Nawanagar P.S.Case No. 169 of 2011 dated 23.12.2011 corresponding to G.R.No.2363 of 2011 by learned Chief Judicial Magistrate, Buxar, whereby cognizance has been taken against the petitioner besides others for an offence under Section 135 of the Electricity Act, 2003 and the case has been transferred to the court of the learned Magistrate for trial and disposal and further summons have been issued to the petitioner as also other accused persons for facing trial.

3. It is not in dispute that in the FIR lodged by the Assistant Electrical Engineer, the petitioner besides others are specifically named as accused persons and they are alleged to have committed theft of electricity. The aforesaid FIR lodged by the Assistant Electrical Engineer gave rise to Nawanagar P.S.Case No. 169 of 2011 dated 23.12.2011, which has been brought on record as Annexure-1 to the present application. The criminal prosecution

launched by the informant was investigated by the police and on close of investigation, chargesheet was submitted against the petitioner besides others. Whereafter, by the impugned order dated 13.08.2012 cognizance has been taken for the offence under Section 135 of the Electricity Act and summons have been issued to the accused persons including the petitioner for facing the trial.

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner was subjected to a proceeding under Section 126 of the Electricity Act, therefore, before taking cognizance, the learned Magistrate ought to have issued show cause notice to him and only thereafter cognizance could have been taken. However, in the present application filed on behalf of the petitioner, order (s) passed under Section 126 of the Electricity Act has not been brought on the record to substantiate his such claim. By placing reliance on the judgment of a learned single judge of this Court in the case of *Amitabh Sinha Vs. The State of Bihar* [2013(2) PLJR 499] as also a judgment of the Hon'ble Apex Court in the case of *Executive Engineer, Southern Electricity Supply Company of Orissa limited Vs. Sri Seetaram Rice Mill* [2012 (2) SCC 108 (para 44)], he submits that the order taking cognizance is fit to be quashed by this Court.

5. Learned Additional Public Prosecutor, appearing on behalf of the State and learned counsel appearing on behalf of the opposite party no.2, have opposed the prayer made on behalf of the petitioner. According to them, on the basis of the materials available on the record, a case under Section 135 of the Electricity Act is made out against the petitioner besides others, and, therefore, the learned Chief Judicial Magistrate has rightly taken cognizance of the offence and summoned the accused persons including the petitioner for facing the trial. Learned counsel

appearing on behalf of the opposite party no.2 has also placed reliance on a Division Bench judgment of this Court in the case of *Mosmat Swaran @ Swaran Manraw Vs.The State of Bihar [2012(2) PLJR 229]* to substantiate his submissions that the points raised on behalf of the petitioner are not tenable.

6. After having heard the parties and on consideration of the materials available on the record, this Court is of the opinion that the submissions made by learned counsel appearing on behalf of the petitioner are completely misconceived and untenable at this stage. For the purposes of taking cognizance, the Magistrate is required to find out a prima facie case to put the criminal trial in motion. At that stage, he is not required to take into consideration the defence of the accused. The defence of the accused can be looked into and considered at a subsequent stage either at the time of framing of charge or during the trial. The decisions referred to above by the learned counsel appearing for the parties are not at all applicable in the fact situation of the present case. The present application seems to be completely misconceived and it is, accordingly, dismissed.

(Birendra Prasad Verma, J)

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