

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.257 of 2014

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

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Bharat Lal Vishwakarma son of Late Bhikkhu Mistri, Resident of Fatuha-Main Road, opposite to Fatuha police station, P.S.-Fatuha, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Inspector General - cum- Director General of Police, Govt. of Bihar, Patna
2. The Senior Superintendent of Police, Patna.
3. The Superintendent of Police (East), Patna.
4. The Sub-Divisional Police Officer, Fatuha, District-Patna.
5. The Station House Officer, Fatuha Police Station , District-Patna.
6. Shri Chandra Kant Jha son of not known to the petitioner, presently posted as A.S.I. and the Investigating Officer of Fatuha, P.S. Case No.-363/2013, P.S.- Fatuha, District-Patna.
7. Sanjay Kumar Sharma son of Shri Sahdeo Sharma, Resident of Village-Khesar, P.S.-Belhar, District-Banka, presently posted as Assistant Electrical Engineer, Fatuha Electric Supply Sub-Division, District-Patna.
8. South Bihar Power Distribution Company, Ltd. through its Managing Director, Vidyut Bhawan, Baily Road, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjit Kumar Singh, Advocate
For the State	:	Kuber Pathak, A.C. to S.C.-14
For the SBPDCL	:	Mr. Akhileshwar Singh, Advocate
		J.C. to Mr. V.K. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 22-01-2015

Heard learned counsel for the petitioner, learned counsel for the State as well as learned counsel appearing on behalf of the South Bihar Power Distribution Company Limited.

The present application under Articles 226 and 227 of the Constitution of India has been filed for quashing of the FIR of Fatuha P.S.Case No.363 of 2013 dated 24th October, 2013 registered for the

offences punishable under section 135 of the Electricity Act, 2003.

Learned counsel for the petitioner has submitted that since a separate proceeding under section 126 of the Electricity Act, 2003 has been initiated against the petitioner for recovery of loss caused to the Board, prosecution of the petitioner is bad in law. He further submits that the seizure list in connection with the FIR would demonstrate that the petitioner has falsely been implicated in the case. In support of his submission, learned counsel for the petitioner relies upon a judgment of the Hon'ble Supreme Court in Executive Engineer, Southern Electricity Supply Company of Orissa Limited and another Vs. Sri Seetaram Rice Mill since reported in 2012(2) SCC 108.

On the other hand, learned counsel for the State as well as learned counsel for the South Bihar Power Distribution Company Limited has submitted that the allegations made in the first information report make out a clear case of theft of electricity after tampering with the meter installed in the premises and hence a cognizable offence is made out.

Having heard the parties, I find that the allegations made in the FIR do constitute a cognizable offence. The judgment relied upon by the learned counsel for the petitioner in the matter of Executive Engineer, Southern Electricity Supply Company of Orissa Limited and another (supra) does not help the case of the petitioner in any

manner. In the said judgment, the Hon'ble Supreme Court in paragraphs 28, 29 and 30 has observed as under:-

“28. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls with the dimensions of criminal jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intendment and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of means rea.

29. Thus, it would be clear that the expression “unauthorized use of electricity” under Section 126 of the 2003 Act deals with the cases of unauthorized use, even in the absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means



and methods as specified under Sections 135(a) to 135(e) of the 2003 Act, has abstracted energy with dishonest intention and without authorization, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act.

30. Therefore, there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorized use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorized use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act.”

In the present case, there is a clear allegation that the petitioner had tampered with the meter and was consuming electricity unauthorisedly. The act of the petitioner would certainly come within the ambit of Section 135 of the Electricity Act, 2003 as section 135 of



the Act deals with an offence of theft of electricity and penalty which can be imposed for such theft whereas section 126 of the Electricity Act, 2003 deals with the cases of unauthorized use, even in absence of intention. Section 126 of the Act does not cover the cases of theft of electricity. Here in the present case ***mens rea*** which is an essential ingredient for constituting a criminal case is apparent from the allegations made in the FIR. One cannot imagine absence of ***mens rea*** when there is specific allegation that electricity was being consumed in an unauthorized manner after tampering with the meter.

In that view of the matter, I find no merit in the present application. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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