IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47953 of 2013

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1. Bijul Singh S/O Sri Gram Deo Singh R/O Village - Maghi Barwa, P.S. Adapur, District - East Champaran At Present R/O Village - Dhangarhwa, P.S. Raxaul, District - East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Managing Director, North Bihar Power Distribution Holding Company Ltd. Patna, Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh
For the Opposite Party/s : Mr. Surendra Kumar (App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 04-04-2016 Heard learned Counsel for the petitioner, learned Counsel for the North Bihar Power Distribution Holding Company Limited and learned Additional Public Prosecutor for the State.

This application has been filed for quashing the First Information Report of Raxaul Police Station Case No. 235 of 2013, registered for the offences punishable under Section 379 of the Indian Penal Code and Section 135 of the Electricity Act, 2003 by invoking Section 482 of the Code of Criminal Procedure, 1973.

From the First Information Report, it appears that in course of a raid, conducted by the Officials of the

Company, on 08.08.2013, theft of electricity in the premises of G. D. S. Academy, Dhangarhwa, Raxaul, was detected. It appears from the materials on record that theft of electricity was being committed by the use of hook direct from the L. T. Pole and PVC wire being used for theft of electricity was seized by the Officials. There was no meter found in the premises during the raid. It has not been disputed that the petitioner is the director of the said Academy.

The petitioner seeks quashing of the First Information Report on the ground that the petitioner had applied for electricity connection on 10.07.2013. According to him, the officials of the Company had told the petitioner that due to unavailability of the meter, the same could not be supplied. Few weeks thereafter, they conducted the raid with malafide intention.

It is his further case that after the raid was conducted, the Company issued a bill to the tune of Rs. 27,776/-, which the petitioner has already deposited.

Learned Counsel appearing on behalf of the petitioner has submitted that on the one hand, the Company has received the said amount of Rs. 27,776/- against the bill raised by them, on the other hand, they are proceeding with the criminal case.

I find, from the materials on record, that the learned Sub Divisional Judicial Magistrate, Raxaul, has taken cognizance of the offence punishable under Section 379 of the Indian Penal Code and Section 135 of the Electricity Act, 2003, on the basis of the charge sheet submitted by the police. Since the allegations made in the First Information Report constitute cognizable offence, no ground for its quashing is made out.

The Court can invoke jurisdiction under Section 482 of the Code of Criminal Procedure for quashing of the First Information Report only if the allegations contained therein do not constitute a cognizable offence.

I, therefore, do not find any merit in this application.

However, in the facts and circumstances of the case, it is directed that if the petitioner applies for compounding of the offence by making payment of compounding fee, as contemplated under Section 152 of the Electricity Act, 2003, the Company shall accept the compounding fee and proceed in terms sof the decision of this Court, in the case of **Mosmat Swaran @ Swaran Manraw v. The State of Bihar and Another,** reported in **2012 (2) PLJR 229**, paragraphs 28 and 29 of which reads thus:

"28. Thus, having examined the

scheme and provisions of the Act, the effect of amendment in the year 2007, our answer to the referred questions would be that deposit of arrears and penalty, as assessed under Section 126 of the Act, does not amount to acquittal by virtue of compounding as contemplated under Section 152 of the Act. Compounding application has to be separately made with the deposit of compounding fee as stipulated under Section 152 of the Act and only upon payment thereof the offence can be said to be compounded resulting in acquittal and not otherwise.

29. A word of caution before closing. As we have noticed in respect of the present case, by virtue of Annexure-3 to this application a bill was served on the consumer showing it to be an F.I.R. bill which the consumer paid and the receipt also shows that it is a payment in respect of the F.I.R. This has no sanctity in law. The Board is entitled to bill a consumer only in accordance with the tariff and the statute. There is no scope of an F.I.R. bill as we have noted above. It is either billing regularly as per tariff or punitively under Section 126 and/or Section 154 (5) as the case may be. There is no fourth option. On threat of prosecution the Board cannot realize any amount which is not authorized or sanctioned by law."

This application stands disposed of, accordingly, with the direction and observations, as aforesaid.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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