IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35727 of 2013

Arising Out of PS.Case No. -217 Year- 2013 Thana -HAJIPUR SADAR District- VAISHALI(HAJIPUR)

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1. Manoj Kumar S/O Late Sulain Singh Resident Of Village Kutubpur, P.O. Thathan Bujurg, P.S. Aldar Hajipur, District Vaishali (Bihar).

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Sanjit Kumar S/O Yogendra Prasad Resident Of Village And P.O. Keshopur, P.S. Sakra, District Muzaffarpur At Present Posted As Fixation Officer-Cum-Reassessment Officer, Junior Electrical Engineer, Electric Supply Section, Rural, Hajipur, District Vaishali (Bihar).
3. Bhupendra Sharma S/O Name Not Known At Present Posted As Junior Line Man, Office Of Electric Supply Section, Rural, Hajipur, District Vaishali (Bihar).

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raj Narayan Mishra
For the Opposite Party/s : Mr. Madan Kumar (App)
For the NBPDCL : Mr. Ratan Prasad Sinha

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 16-03-2016 Heard learned Counsel for the petitioner and learned Counsel for the North Bihar Power Distribution Company Limited.

This application has been filed seeking quashing of the First Information Report of Hajipur (Sadar) Police Station Case No. 217 of 2013, registered for the offence punishable under Section 135 of the Indian Electricity Act, 2003.

Learned Counsel for the petitioner submits that the allegation of theft of electricity is palpably false and the case has been maliciously instituted, few months after the petitioner had applied for connection of electricity. He has also submitted that the petitioner has deposited a sum of Rs. 34,615/- against arrears of bill. He has also submitted in compliance of an order of this Court, dated 21.03.2014, passed in Criminal Misc. No. 2837 of 2014 also for grant of anticipatory bail, the petitioner has deposited 40 per cent of the loss amount. According to him, loss arising out of theft of electricity has been wrongly calculated to be Rs. 44,000/-.

Considering the facts and circumstances in the totality, I consider it appropriate to dispose of this application with a direction to the Company that if the petitioner deposits the amount for compounding of the offence in terms of the provisions contained in Section 152 of the Indian Electricity Act, 2003, within a period of four weeks from today, in the account of the Company, the Executive Engineer shall proceed for compounding of the offence in accordance with a Division Bench 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 to 30 of which, read as follows:-

"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.

30. Accordingly, we are of the view that the judgments of this Court, inter alia, in the case of K.N. Ram @ Kedar Nath Ram Vs. The State of Bihar and another since reported in 2007 (3) PLJR 484, Sanjay Kumar Yadav &

another Vs. The State of Bihar and another since reported in 2008 (4) PLJR 665, Vimala Prasad Vs. The Bihar State Electricity Board & Ors. since reported in 2009 (2) PLJR 991, Sri Anant Kumar Vs. The State of Bihar & Others since reported in 2009 (3) PLJR 987 and Prabhash Kumar Vs. The State of Bihar & Another since reported in 2010 (1) PLJR 966, which merely hold that as the delinquent consumer has paid the punitive amount of loss as mentioned in the F.I.R. or assessed under Section 126, the prosecution cannot continue, do not lay down the correct proposition of law as in absence of compounding fee being paid as contemplated under Section 152 the offences cannot be compounded. Those lines of decisions are disapproved and consequently overruled."

This application is accordingly disposed of in terms of the Division Bench decision of this Court in the case of **Mosmat Swaran @ Swaran Manraw** (supra).

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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