

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 438 OF 2016

1. Satsh Jindal @ Agrawal, S/o Om Prakash Agrawal, aged about 42 years, R/o Main Road, Gurudwara, Thana Bagbahra, Tahsil and District Mahasamund (C.G.)
2. Mukesh Kumar Jindal @ Agrawal, S/o Om Prakash Agrawal, aged about 42 years, R/o Jindal Rice Mill, Main Road, Bagbahra, Tahsil and District Mahasamund (C.G.)

... Petitioners

Versus

State of Chhattisgarh, through Incharge, Special Investigation Cell, Raipur (C.G.)

... Respondent

For Petitioners	:	Ms. Sharmila Singhai, Advocate.
For Respondent-State	:	Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/12/2016

1. The present petition under Section 482 of CrPC has been preferred by the Petitioners assailing the order dated 27.11.2015 and the order dated 18.12.2015 passed by the Special Judge (Electricity Act) & First Additional Sessions Judge, Raipur, in Electricity Criminal Case No. 67 of 2012, whereby the Court below has rejected the application under Section 239/245 of CrPC for discharge of the Petitioners from the offence charged.
2. Facts of the case in brief are that the present Petitioners have been prosecuted vide Crime No. 168 of 2010, dated 29.7.2010, for the offence under Sections 420, 409/34 of IPC and also under Section 135 of the Electricity Act. The charges in the instant case were framed as early as on 10.9.2013 and the matter thereafter was proceeded for the evidence of the prosecution. On 27.11.2015 in the midst of the hearing, an application under Section 239/245 of CrPC was filed seeking for discharge of the Petitioners from the offence under Section 135 of the Electricity Act.

According to the Petitioners, from the contents which have been brought on record and also the evidences which have been recorded till then, the ingredient required for the making of the offence under Section 135 of the Electricity Act is not made out and that has prompted them to move the said application for discharge from the offence. The said application was rejected with cost of Rs.1000/-, on 27.11.2015 by the Court below. The ground for rejection of the said application by the Court below was the fact that, the stage of moving an application under Section 239/245 of CrPC had already been over as it should have been filed at the time of framing of charge or before that, and that subsequently when the matter was also fixed for evidence and more than a couple of witnesses also having been examined it was not proper for the Petitioners to have moved such application, and therefore the same was rejected.

3. Immediately, on the very next date, i.e., on 28.11.2015, another application was filed by the Petitioners for review of the order dated 27.11.2015, alleging that the order dated 27.11.2015 has been passed without granting any opportunity of hearing to the Petitioners side and that the Counsel for the Petitioners had waited in the Court since the morning till 5:00pm and without hearing his arguments the Court below has in a mechanical manner without application of mind rejected the application and has also imposed cost, and thus they have sought for the review of the said application. The Court below again, hearing the review application vide its order dated 18.12.2015 rejected the same and has further imposed a cost of Rs.4000/- while rejecting the said review application. While rejecting the said application also, the Court below gave the reasoning that it is not a case where the Petitioners were not heard and that both the parties to the dispute were heard and the matter was fixed for orders at 5:00pm and the Counsel for the Petitioners had put in his appearance and

also taken down the next date of hearing and thus since there was no strong case made out for recalling of the order dated 27.11.2015, the said review application was rejected. It is these two orders, dated 27.11.2015 and 18.12.2015, which are under challenge in the present petition under Section 482 of CrPC.

4. Learned Counsel for the Petitioners, Ms. Singhai, submits that the only grievance of the Petitioners which made them to file the present petition is, that the order dated 27.11.2015 was passed without granting an opportunity of hearing. She submits that the Petitioners had engaged a new lawyer who had filed his power on the same day and he was waiting on behalf of the Petitioners before the Court below from the morning till 5:00pm expecting the Court to take up the case and grant an opportunity of hearing, but not granting the same the Court below rejected the said application. She further submits that the Court below may have passed an order in favour or against the Petitioners, but the right of hearing was definitely to be provided by the Court below and which in the instant case has been denied by the Court below, and therefore the impugned orders deserve to be recalled.

5. Having considered the rival contentions put forth on behalf of either side and on perusal of the record, what clearly reflects is the fact, that the order dated 27.11.2015 shows that the arguments were heard on either side and then the matter was closed for orders and the order was passed on the same day which has been also noted by the Counsel for the Petitioners. Therefore, there was no substance in what the Counsel for the Petitioners submits. Further, what also cannot be brushed aside is the fact that the charges in the instant case were framed on 10.9.2013 and it is to be presumed that the said order has not been questioned by the Petitioners before any forum and the same has attained finality for the

purpose of the trial. Further, what also reflects is the fact, that the charges were framed after hearing the counsels for the either side on the question of framing of charge, which also is not in dispute. The Petitioners having been heard on all the earlier proceedings, there was no reason whatsoever to doubt the order-sheet of the Court below, dated 27.11.2015, inasmuch as not granting an opportunity of hearing to the Petitioners on the application for discharge. Further, the review application also had been filed by the Petitioners on the same grounds which have already been dealt with elaborately by the Court below giving reasons while rejecting the same. This Court thus does not find any good ground raised by the Counsel for the Petitioners, calling for an interference with the two orders.

6. So far as the imposition of cost is concerned, the two orders itself are very explicit, inasmuch as the stages at which those applications were filed, which perhaps led the Court below imposing the costs as the matter was pending consideration before the Court below for a considerable period of time and it was getting adjourned on some lame excuse or on an application being moved by the accused persons.

7. Thus, the two impugned orders do not warrant any interference. The Criminal Misc. Petition being devoid of merits and same deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge