

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.7336 of 2012

- =====
1. Pankaj Kumar S/O Girjanand Singh Resident Of Mohalla- New Sub- Division
Sital Bigha Road, Daudnagar, P.S.- Daudnagar, District- Aurangabad
 2. Keshav Saw S/O Late Ram Chandra Saw Resident Of Mohalla- New Sub-
Division Sital Bigha Road, Daudnagar, P.S.- Daudnagar, District- Aurangabad
.... Petitioners

Versus

1. The State of Bihar
 2. The Bihar Electricity Board through its Chairman
.... Opposite Parties
- =====

Appearance :

For the Petitioners	:	Mr. Anil Kumar Sinha No.6, Advocate
For the State	:	Mr. P.K. Pandey, APP
For O.P. No.2	:	Mr. Ranjit Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 27-04-2017

Petitioners have filed the petition for quashing order dated 02.01.2012 whereby cognizance under Section 379 of the Indian Penal Code as well as under Sections 135 and 138 of the Electricity Act, 2003 has been taken by S.D.J.M., Daudnagar, Aurangabad in connection with Daudnagar P.S. Case No.167 of 2011.

2. A brief fact giving rise to this case is that the Assistant Electrical Engineer, Daudnagar found that the petitioners got connections from 63 K.V.A. transformer installed exclusively for the Sub-divisional Office and court, which may cause defect in the transformer due to over loading, therefore, they were fined Rs.13,800/- each.

3. Learned counsel appearing on behalf of the petitioners submits that both the petitioners are genuine consumers having authorized electric connection. They have got their meter installed by



Electricity Department and paying the energy bill regularly so it is not a case of electrical theft therefore Section 379 of the Indian Penal Code and Sections 135 and 138 of the Electricity Act, 2003 do not apply in the present factum of the case. Moreover, cognizance cannot be taken in this case in view of Section 151 of the Electricity Act, 2003 as it is a police case and not a complaint case. In support of his contention, he places reliance on a decision reported in 2009 (3) PLJR 767 (*Satyendra Rai v. State of Bihar*).

4. The learned counsel appearing on behalf of the Electricity Board submits that there is no illegality in the impugned order as cognizance can be taken by the court in a police case too. However, he concedes that there is no application of Section 379 of the Indian Penal Code as well as Section 135 and Section 138 of the Electricity Act, 2003 as it is not a case of electrical theft rather of getting connection from transformer exclusive installed for Sub-divisional Office and Sub-divisional court at Daudnagar. However, the petitioners have deposited Rs.13,800/- each as fine amount.

5. Having considered the rival submissions of both sides, I find that the present case was lodged by the Electricity Department vide Daudnagar P.S. Case No.167 of 2011 but the allegation levelled therein does not make out a case under Section 379 of the Indian Penal Code as well as Sections 135 and 138 of Electricity Act, 2003. It is a case of taking electricity connection from a transformer meant exclusively for Sub-divisional court and Office, however, it is not a case



that any electrical theft was being committed as the connection was legal. It is also not the case that electrical energy is being used bypassing meter or there is any tampering in the meter. However, the Electricity Act, 2003 is amended by Electricity Amendment Act, 2007, which comes into effect from 15.06.2007 whereby amendment has been made in Section 151 of the Electricity Act as well as two new provisions by way of Sections 151-A and 151-B have been inserted, which are as follows:

"[151-A. Power of police to investigate.—For the purposes of investigation of an offence punishable under this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973(2 of 1974).

151-B. Certain offences to be cognizable and non-bailable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), an offence punishable under sections 135 to 140 or section 150 shall be cognizable and non-bailable.]"

6. In view of the amended provisions now the court may also take cognizance for offence punishable under this Act on a report filed under Section 173 of the Code of Criminal Procedure by the police as it has been done in the present case. In view of the amended provision a police officer may lodge and investigate the case for electrical theft, the specific section 135 of Electricity Act also contains provision incorporated in sub-clause (1-A) of Section 135 of the Act making specific provision that authorized officer of the licensee or supplier, as the case may be, lodge a complaint in writing relating to commission of such offence in Police Station having jurisdiction within twenty four hours from the time of disconnection. However, no *prima facie* case



under Section 379 of the Indian Penal Code and Sections 135 and 138 of the Electricity Act, 2003 is made out. Section 138 of the Electricity Act relates to interference with meters or works of licensee but that too does not apply in view of Annexure-4 of the petition because there was no interference found in meters of the petitioners and the petitioners were communicated by letter dated 06.09.2011 that they have to take connection from a transformer installed near the PNB, Bhakruan, whereas First Information Report was instituted prior to that on 20.08.2011. Already amount of fine has been deposited by both the petitioners. So in this backdrop obvious conclusion is that it is not a case of electrical theft so any proceeding in the court below would be abuse of the process of the court, therefore, the cognizance order dated 02.01.2012, passed by the learned S.D.J.M., Daudnagar, Aurangabad in connection with Daudnagar P.S. Case No.167 of 2011 and subsequent proceeding against the petitioners is quashed.

7. In the result, this quashing petition is allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
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