

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43741 of 2013

Arising Out of PS.Case No. -11 Year- 1999 Thana -C.B.I CASE District- PATNA

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M/S Straw Board (P) Ltd. through its Proprietor Jagdish Prasad S/O Late Ram Dayal Sah Resident Of Village - Rajpur, P.S. - Rajpur, District - Rohtash, Proprietor Of M/S Straw Board (Pvt.) Ltd.

.... Petitioner

Versus

The State Of Bihar through Vigilance Department, Patna, Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Anurag Saurav, Advocate

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 28-06-2017

The petitioner is accused in Special P.S. Case No.13 of 1999 (Vigilance P.S. Case No.11 of 1999) in which cognizance has been taken under Sections 379, 420, 465, 467, 468, 120(B) of the Indian Penal Code and under Section 13(2) read with 13(1)(e) of P.C. Act.

2. Learned counsel submits that it is case of electrical theft and cognizance has been taken under Section 379 of I.P.C. which is not applicable in this case as under the Electricity Act penal provision for electrical theft is Section 135 of the Act. Learned counsel has placed reliance on a decision reported in **2011(1) SCC 1064 [Binay Kumar vs. State of Bihar]** that cognizance cannot be taken for electrical theft under Section 379 of I.P.C. and, therefore, cognizance order is bad in law.



3. The learned counsel for the Vigilance Department submits that cognizance has been taken under various sections of I.P.C. coupled with Section 13 of Prevention of Corruption Act, so at the stage of framing of charge, the court would frame charge under Section 135 of Electricity Act and not under Section 379 of I.P.C.

4. However, on perusal of F.I.R. and material on record, it appears that accusation is that Superintending Engineer, Assistant Engineers and Junior Engineers of the Electricity Department, in connivance with the petitioner put Electricity Board in loss and consequently the petitioner wrongfully gained. The petitioner is said to be the owner of an Industry in the name of M/S Straw Board and he applied to the Superintending Engineer, Bhojpur for getting load of 200 H.P. and the same was sanctioned, subsequently entered into an agreement with Electricity Department. As per one of the conditions, if the consumer within three months from the agreement do not get the connection then he has to deposit 50% of the minimum guarantee for three years but that amount was not deposited, later on the petitioner filed a petition for sanctioning load of 79 H.P. but without following official procedure the same was allowed by other co-accused, so they conspired together and caused loss of several lacs to Bihar Electricity Board. Therefore, the contents of allegation is not of electrical theft only but indulgence in corruption by other engineers of Bihar State Electricity Board co-accused in this case. Howsofar taking of cognizance under section 379 I.P.C. instead of Section 135 of



Electricity Act is concerned, the same may be rectified at the time of framing of charge so only for that reason, it is not in the interest of justice to set aside the cognizance order.

5. Accordingly, this quashing application stands dismissed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
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