

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.57369 of 2017

Arising Out of PS.Case No. -221 Year- 2016 Thana -SHEOHAR District- SHEOHAR

=====

Rinki Devi wife of Narendra Patel, Resident of Ward No.5, Gandhi Chowk, P.S.-
Sheohar, District- Sheohar. Petitioner/s

Versus

1. The State of Bihar.
 2. The North Bihar Power Distribution Company Ltd., through Junior Electric
Engineer, Sheohar. Opposite Party/s
- =====

Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa, Advocate
For the Respondent No.2 : Ms. Nivedita Nirvikar, Standing Counsel
For the State : Mr. Jharkhandi Upadhyay, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 11-12-2017

This application under Section 482 of the Code of Criminal Procedure (for short ‘the Cr.P.C.’) has been filed for quashing the order dated 05.06.2017 passed by the learned Chief Judicial Magistrate, Sheohar by which he took cognizance of the offence punishable under Section 135 of the Electricity Act, 2003 (for short ‘the Act’) against four persons including the petitioner in connection with Trial No.907 of 2017 arising out of Sheohar P.S. Case No.221 of 2016.

2. The prosecution case against the petitioner, in brief, is that the opposite party no.2 along with three other officials conducted surprise inspection to enquire into the matter of theft of electricity. In the process it was noticed that the petitioner was committing theft by passing the electric meter causing loss to the Corporation to the tune of rupees twenty six thousand.



3. In the same FIR there are allegations against Vikash Kumar and Santosh Kumar, who were running firms, namely, Om Communication and Aastha Vidya Niketan respectively for committing theft of electricity.

4. On completion of investigation, the police submitted closure report against the petitioner and charge-sheeted three others, namely, Vikash Kumar, Santosh Kumar and Dharmendra Patel.

5. On perusal of the police report submitted under Section 173 of the Cr.P.C., the learned Magistrate vide order dated 05.06.2017 took cognizance of the offence punishable under Section 135 of the Act and summoned four persons including the petitioner.

6. Being aggrieved by the aforesaid order dated 05.06.2017, the contention advanced on behalf of the petitioner is that on the date of registration of FIR itself consumption charge along with compounding fee was paid by the petitioner, which was accepted by the authorised officer. On receipt of consumption charge and the compounding fee, no dues certificate was issued on 08.02.2017 by the Assistant Electrical Engineer, Sheohar. He also wrote to the S.H.O., Sheohar Police Station to close the case. Learned counsel for the petitioner contended that the learned Magistrate ought to have considered that once compounding fee was already accepted under sub section (2) of section 152 of the Act, no proceeding should have been allowed to continue against the petitioner.



7. In view of the payment of consumption charge and the compounding fee, learned counsel for the opposite party no.2 North Bihar Power Distribution Company Limited also submitted that no useful purpose would be served by putting the petitioner on trial.

8. I have heard learned counsel for the parties and perused the record.

9. Section 152 of the Act reads as under:

Section 152. Compounding of offences:- (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE

Nature of Service	Rate at which the sum of money for Compounding to be collected per Kilowatt (KW) / Horse Power (HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere(KVA) of contracted demand for High Tension (HT)
(1)	(2)
1.Industrial Service 2.Commercial Service	twentythousand rupees; ten thousand rupees;



3.Agricultural Service	two thousand rupees;
4. Other Services	four thousand rupees:

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) The Compounding of an offence under sub-section(1) shall be allowed only once for any person or consumer.”

10. From a reading of sub section (2) of section 152 of the Act, it is manifest that on payment of the sum of money in accordance with sub section (1) of section 152 of the Act, no proceeding can be continued against such consumer or person in any criminal court. Further, from a reading of sub section (3) of Section 152 of the Act, it would be manifest that the acceptance of sum of money for



compounding of the offence in accordance with sub section (1) of section 152 of the Act by the Appropriate Government or any officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of Section 300 of the Cr.P.C.

11. As the factum of compromise is not disputed and the petitioner has brought on record the documents to support that consumption charge and compounding fee were paid on the date of institution of the FIR itself, in the opinion of this Court, allowing the prosecution to continue would amount to an abuse of process of the court.

12. Resultantly, the impugned order dated 05.06.2017 passed in Trial No.907 of 2017 arising out of Sheohar P.S. Case No.221 of 2016 dated 24.12.2016, so far as it relates to the petitioner is quashed.

Md.S./-

(Ashwani Kumar Singh, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14.12.2017
Transmission Date	

