

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42054 of 2013

Arising Out of PS.Case No. -210 Year- 2010 Thana -BIKRAMGANJ District- SASARAM
(ROHTAS)

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Savitri Devi Wife Of Gopal Sahu @ Gopal Sah Resident Of Sasaram Road,
Anumandal Mohalla - Police Station -Bikramganj, District- Rohtas

.... Petitioner

Versus

1. The State Of Bihar
2. South Bihar Power Distribution Co. Ltd. Vidhyut Bhawan Bailey Road, Patna
3. Ram Janam Singh Son Of Late Kailash Singh Resident Of Village - Zero Maeel
Anaith, Police Station - Ara, District- Bhojpur At Present As Assistant Engineer
(Electrical) Electric Supply Division Bikramganj, Rohtas

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Subhash Chandra Dubey, Advocate
For the State : Mr. Suresh Prasad Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 30-06-2017

This quashing petition is filed for setting aside the order dated 5.3.2013 taking cognizance of the offence under Sections 33/34 of the Electricity Act, 2003 passed by S.D.J.M., Bikramganj in Bikramganj P.S. Case No.210 of 2010.

2. The prosecution case in brief is that one F.I.R. was lodged by the Assistant Electrical Engineer, Electric Supply Division that the petitioner was found committing electrical theft by putting the hook over the transmission line putting revenue loss to the tune of Rs.80,000/-.

3. Learned counsel for the petitioner challenges the



order taking cognizance on two grounds, first that cognizance has been taken under old provision of law under Sections 33 and 44 of the Act and not under Sections 135 and 136. It is also submitted that according to Section 151 of the Indian Electricity Act, 2003 only Special Court can take cognizance of the offence.

4. Learned counsel appearing on behalf of the Electricity Board submits that wrong sections of theft as per the old law is technical error it may be corrected at the time of framing of the charge. Secondly, the cognizance is not bad in law because cognizance was not taken by Special Court because in every judgeship, the Special Courts have not been created rather only at three places, Patna, Gaya, Muzaffarpur, Special Courts are working.

5. Having considered rival submissions and on perusal of the record, the allegations levelled in the F.I.R. and other materials on the record prima facie case of electrical theft is made out against the petitioner. It is true that after latest amendment in the Electricity Act, the punishment of electrical theft is under Section 135 of the Act but in this case inadvertently as the Magistrate appears oblivious of the amendment, took cognizance under the old sections, however the same may be corrected by the court below. Moreover such irregularity does not vitiate the proceeding in view of Section 460 of the Cr.P.C, if any Magistrate is not empowered by law to take cognizance of



offence even then takes cognizance of an offence under Clause (a) or Clause (b) of Sub-Section (1) of Section 190 of Cr.P.C, it is mere irregularity and not illegality. Now the case has been transmitted to the Special Court for enquiry and trial; so for aforesaid reason, I do not find any ground for interference in the cognizance order.

6. With the said observation, this petition is dismissed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
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