

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29771 of 2014

Arising Out of PS. Case No.-339 Year-2013 Thana- BARAUNI District- Begusarai

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Ratan Kumar Son of Late Suresh Ram Resident of Mohalla-Jagjeevan Ashram, P.S.-Madhepura, District-Madhepura at present posted as Electrical Executive Engineer, Barauni, P.S.-Barauni, District-Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sandeep Anand Son of Shri Gopal Krishna Gupta Managing Director, National Industrial Corporation Industrial Area, Devra (Tilrath), P.S.-Barauni, District-Begusarai.

... .. Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. Vinay Kirti Singh, Senior Advocate Mr. Akhileshwar Singh, Advocate Mr. Vijay Kumar Verma, Advocate
For the State	:	Mr. B.N. Pandey, APP
For O.P. No.2	:	Mr. Abhimanyu Vatsa, Advocate Mr. Rajni Kant Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date : 06-03-2018

Heard learned counsel for the petitioner and the learned counsel appearing on behalf of opposite party no.2.

2. The petitioner, who happens to be the Electrical Executive Engineer being the informant of Barauni P.S. Case No.339 of 2013 seeks quashing of the order dated 25.11.2013, passed by learned Chief Judicial Magistrate, Begusarai thereby accepted the final form submitted by the police in the aforesaid case registered under Section 135 of the Electricity Act, 2013.



3. Learned counsel for the petitioner submits that it is a case of tampering of meter and by-passing the meter, electrical theft was being committed by a firm named as National Industrial Corporation situated in the Industrial complex of Barauni Industrial Area, engaged in manufacturing wax and also using the electricity in another campus, a farm house, adjacent to the said factory causing loss of the revenue worth Rs.7,83,471/- by committing electrical theft. It is also submitted that the investigating agency has done perfunctory investigation, during investigation the meter was not examined in order to ascertain whether it was tampered and wrongly submitted final form coming to conclusion that as a mistake of fact the case was instituted. No notice was served to the informant and on false report of process server showing refusal by the petitioner finding the notice served, the final form was accepted. It is further submitted that the case was instituted in the official capacity and it is not mentioned that at which place the process server went for service of notice, so without service of notice to the petitioner, informant of the case, final form submitted by the police was accepted by the court below which requires intervention from this Court.

4. Learned counsel appearing on behalf of opposite party no.2 contends that the petitioner is Managing Director of National



Industrial Corporation but the said Company has not been made accused, so vicarious criminal liability cannot be fastened to the petitioner, the notice was also served to the petitioner but he refused to accept the notice, moreover the order dated 12.03.2014 has not been challenged by the petitioner by which the protest petition of the informant was rejected. Learned counsel for the opposite party no.2 places reliance on an unreported judgment of this Court passed in the case of 'The Bihar State Electricity Board Through Its Chief Engineer (Commercial) vs. The State of Bihar & Anr.' (Cr. Misc. No.34652 of 2011) wherein under similar circumstances order accepting final form without service of notice to the informant was set aside.

5. Having considered the rival submissions and on perusal of the record, the Court finds that the petitioner, informant of Barauni P.S. Case No.339 of 2013 lodged a case of electrical theft against the petitioner under Section 135 of the Electricity Act. The petitioner is the Electrical Executive Engineer of North Bihar Power Distribution Company Limited and on 18.07.2013 raided the premises of the National Industrial Corporation engaged in manufacturing wax and found committing electrical theft for manufacturing of wax and consumption in the factor by-passing the meter. The meter was found tampered and more power was



consumed than the sanctioned load, further the electricity was being used in a farm house of the accused situated adjacent to the said firm. PVC wires along with the electrical meter were seized and sealed and seizure list was prepared and handed over to the police for investigation. The Court finds from perusal of the case diary that investigation was conducted in a lackadaisical manner, even the meter was not examined by the expert in order to ascertain whether there was any tampering in the meter or not; whereas there is specific allegation of tampering of meter and using the electricity by by-passing the meter. Only on oral statement of witnesses, the police comes to the conclusion that it is a case of mistake of fact. Moreover, the service of notice is mandatory before accepting the final form but the court below wrongly accepting the notice served to the informant accepted the final form. There is no witness of the office regarding the service of notice to the informant. The service report of such notice cannot be accepted as valid service to the informant.

6. The contention of the learned counsel appearing on behalf of opposite party no.2 that vicarious criminal liability cannot be fastened to the opposite party no.2 is not acceptable in view of provisions of Section 149 of the Electricity Act, 2003. Section 149 of the Electricity Act, 2003 reads as follows:



“149. Offences by companies.”-(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.

Explanation. -For the purposes of this section,-

(a) “company” means a body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

7. In view of sub-clause (2) of Section 149 of the Electricity Act, 2003, it is a matter of evidence and the prosecution can always prove that the offence of illegal theft or any offence committed under the said Act has been committed with the consent



or connivance of the director, manager or secretary or any other officer of the company, so at this stage, merely that the petitioner being the Managing Director cannot be prosecuted, cannot be accepted in view of the said provision, so for the aforesaid reasons, the impugned order 25.11.2013 accepting the final form by the Chief Judicial Magistrate, Begusarai is set aside and further he is directed to proceed in accordance with law after hearing the informant on acceptance of the final form.

8. The quashing application stands allowed.

(Arun Kumar, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
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