

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.526 of 2019

Arising Out of PS. Case No.-256 Year-2018 Thana- GAURICHAK District- Patna

Suchit Kumar aged about 29 years, male, Son of Shudarshan Sharma, resident of Village-Kairwa, P.S-Ghosi Dist.-Jehanabad

... .. Petitioner

Versus

1. The State of Bihar through the Director General of Police Govt. of Bihar, Patna
2. The Inspector General of Police, Bihar, Patna
3. The Senior Superintendent of Police, Patna
4. The Sub-Divisional Police Officer, Gaurichak, Patna
5. The Officer in charge Gourichak, Patna
6. The South Bihar Power Distribution Company Ltd. through its Director, Vidyut Bhawan Baily Road, Patna

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar, Advocate
For the State	:	Mr. Ajay Kumar, AC to GP-4
For respondent no. 6	:	Mr. Ajit Kumar Sinha, Advocate
		Miss. M. Jaiswal, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 26-03-2019

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the respondent no.

6.

2. This application under Article 226 of the Constitution of India has been filed by the petitioner for quashing the first information report (for short 'FIR') of Gaurichak P.S. Case No. 256 of 2018 registered under Sections 279 and 427 of the Indian Penal Code (for short 'IPC') and



Section 139 of the Electricity Act, 2003.

3. Learned counsel appearing for the petitioner has submitted that even if the entire allegations made in the FIR are believed to be true, no case for investigation by the police is made out. He has submitted that on the admitted facts of the case, the essential ingredients to constitute an offence under Section 279 of the IPC are not attracted. Apart from Section 279 of the IPC, Section 427 of the IPC and Section 139 of the Electricity Act, 2003 are non-cognizable offences. In view of the statutory bar provided under sub-section (2) of Section 155 of the Code of Criminal Procedure (for short 'CrPC'), the police have no authority to institute an FIR and investigate into the same when the offences alleged are non-cognizable.

4. *Per contra*, learned counsel appearing for the State has submitted that it is true that the offences punishable under Section 427 of the IPC and Section 139 of the Electricity Act, 2003 are non-cognizable, but the offence under Section 279 of the IPC is a cognizable one. In case, the allegations made in the FIR constitute both cognizable and non-cognizable offences, the police would have jurisdiction to institute an FIR and investigate into the same. He has further contended that the allegations made in the FIR would certainly attract the



ingredients of the offence punishable under Section 279 of the IPC.

5. Learned counsel appearing for respondent no. 6 has supported the contentions advanced on behalf of the State. He has submitted that from the allegations made in the FIR, it would be evident that on 28.07.2018, in the night, at about 02.35 a.m., the truck belonging to the petitioner was being driven in a rash and negligent manner and it had badly damaged 11KV electric pole, as a result of which the supply of power was interrupted in the entire Gaurichak village for about 18 hours. He has contended that since the investigation is going on, it would not be proper for this Court to interdict the FIR on the basis of defence taken by the petitioner at this stage.

6. I have heard learned counsel for the parties and carefully perused the allegations made in the FIR of Gaurichak P.S. Case No. 256 of 2018, as contained in Annexure-1 to this application.

7. In order to appreciate the rival submissions made on behalf of the parties, it would be proper to look into the allegations made in the FIR.

8. The FIR has been instituted on the basis of the written report submitted by one Pradeep Kumar Rai, a Junior



Electrical Engineer, Sampatchak, Patna wherein he has stated that on 28.07.2018, in the night, at about 02.35 am, a truck bearing registration no. BR11 GB-0329 collided with 11KV electric pole near Upgraded Middle School, Ajimchak as a result of which power supply in the Gaurichak village was interrupted for nearly 18 hours depriving 1500 consumers from consumption of Electricity. The said act of the driver of the vehicle has resulted into a loss of Rs. 71,000/- to the South Bihar Power Distribution Company Ltd.

9. On the basis of the aforesaid written report, the informant Pradeep Kumar Rai alleged that an FIR under Section 135 and other relevant provisions of the Electricity Act, 2003 be registered against the owner of the truck in question.

10. On the basis of the aforesaid written report, Gaurichak P.S. Case No. 256 of 2018 was registered on 28.07.2018 under Sections 279 and 427 of the IPC and Section 139 of the Electricity Act, 2003.

11. In view of the submissions made on behalf of the petitioner that the allegations made in the FIR would not attract the ingredients of any cognizable offence, at this stage, it would be apt to extract the provision prescribed under Section 279 of the IPC hereunder:



“279. Rash driving or riding on a public way.—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

12. From a reading of the aforesaid provision, it would be manifest that in order to constitute an offence under Section 279 of the IPC there must be an allegation of driving of a vehicle, or riding on a public way and such driving or riding must be so rash and negligent as to endanger human life or to be likely to cause hurt or injury to any other person.

13. In the instant case, there is no allegation that the truck in question was being driven rashly and negligently as to endanger human life. There is also no allegation that the alleged act of the driver of the truck in question was likely to cause hurt or injury to any other person. In absence of the aforesaid allegations in the written report, it can safely be said that the essential ingredients for constituting the offence punishable under Section 279 of the IPC was not attracted even on admitted facts.



14. As far as Section 427 of the IPC is concerned, the same is admittedly a non-cognizable offence.

15. The only other offence alleged in the FIR is Section 139 of the Electricity Act, 2003, which provides that whoever, negligently breaks, injures, throws down or damage any material concerned with the supply of electricity, shall be punishable with fine which may extent to ten thousand rupees.

16. The Electricity Act, 2003 is a special Act under which Section 139 has not been classified as a cognizable offence.

17. In regard to offences under the IPC in the first schedule of the CrPC classification as to whether a particular offence is cognizable or non-cognizable has been made. Schedule II of the CrPC classifies the offences against other laws. Schedule II stipulates that if offence is punishable with imprisonment for less than three years or with fine only, the same would be a non-cognizable offence.

18. Since 139 of the Electricity Act, 2003 prescribes fine only, as per Schedule II of the CrPC, it will be deemed to be a non-cognizable offence.

19. Non-cognizable offence has been defined under Section 2(l) of the CrPC as an offence for which, a police officer



has no authority to arrest without warrant.

20. Sub-section (1) of Section 155 of the CrPC provides that when information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

21. Sub-section (2) of Section 155 of the CrPC provides that no police officer shall investigate a non-cognizable offence without the order of a Magistrate having power to try such case or commit the case for trial.

22. In view of the statutory bar sub-section (2) of Section 155 of the CrPC, as no case is made out under Section 279 of the IPC even on admitted facts and the other offences alleged under the IPC and the Electricity Act, 2003 in the FIR are non-cognizable, in my considered opinion, the police authority had no jurisdiction to institute an FIR on the basis of the written complaint and proceed with the investigation without the order of a Magistrate.

23. Accordingly, the FIR of Gaurichak P.S. Case No. 256 of 2018 as also investigation conducted pursuant to the



institution of the said FIR is hereby quashed.

24. This application stands allowed.

(Ashwani Kumar Singh, J)

kanchan/sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.04.2019
Transmission Date	02.04.2019

