IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44469 of 2016

Arising Out of PS. Case No.-126 Year-2012 Thana- KHAJANCHI HAT District- Purnia

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1. Ram Pravesh Sharma Son of Late Ramadhar Sharma, resident of Village Patauna, P.O. Sidhipur, P.S. Paliganj, District- Patna.
2. Ramnath Verma Son of Sri Ramphal Singh, Resident of Village Kinjar, P.O. and P.S.- Kinjar, District- Arwal.
3. Kishore Kumar Singh Son of Sri Shyamdeo Singh, resident of Village-Salmari, P.O. Salmari, P.S. Azam Nagar, District- Katihar.
4. Prashant Kumar Manju @ Prashant Kumar Manjhi, son of Om Prasad, resident of Village/Mohalla- Panchwati Nagar Rajgir, P.O. and P.S.- Rajgir, District- Nalanda.

... ... Petitioner/s

Versus

1. The State Of Bihar Through Director, Vigilance, Bihar, Patna
2. Chairman-cum- Managing Director, Bihar State Electricity Board, presently Bihar State Power Holding Company Limited, Vidyut Bhawan, Patna
3. Sri Birendra Prasad, the then Electrical Superintending Engineer, Electric Supply Circle, Purnia.

... ... Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 43214 of 2016

Arising Out of PS. Case No.-126 Year-2012 Thana- KHAJANCHI HAT District- Purnia

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Dhiraj Kumar Jha S/o Saranghar Jha R/o Village- Raghunathpur, P.S.- Bhargama, District- Araria.

... ... Petitioner/s

Versus

1. The State Of Bihar Through Vigilance, Distt. Patna
2. The Bihar State Electricity Board, Bailey Road, District- Patna.

... ... Opposite Party/s

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Appearance :
(In CRIMINAL MISCELLANEOUS No. 44469 of 2016)

For the Petitioner/s	:	Mr.Ajay Kumar Thakur, Advocate
		Ms.Babita Kumari, Advocate
		Mr.Pravin Kumar, Advocate
		Mr.Shashank Kumar, Advocate
For the Company	:	Mr.Vinay Kirti Singh, Advocate
		Mr.Anjani Kumar, Advocate
For the Vigilance	:	Mr.Sanjay Prasad, Advocate

(In CRIMINAL MISCELLANEOUS No. 43214 of 2016)

For the Petitioner/s	:	Mr.Sandeep Kumar, Advocate Mr.Chandra Mohan Jha, Advocate Mr.Samrendra Kumar, Advocate
For the State	:	Mr.Jharkhandi Upadhyay, A.P.P.
For the Electricity	:	Mr.Vinay Kriti Singh, Senior Advocate
For the Vigilance	:	Mr.Sanjay Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 14-08-2019

Heard learned counsels for the parties.

2. The petitioners are accused in connection with K.Hat Police Station Case No.126 of 2012, corresponding to Special Case No.10 of 2012, pending in the court of learned Special Judge, Vigilance-II, Patna. All the petitioners have sought for quashment of the order dated 03.08.2016 passed in the aforesaid case, whereby prayer of the petitioners for discharge has been refused.

3. The challenge is on the ground that on bare perusal of the First Information Report, material collected during investigation and counter affidavit filed on behalf of the Electricity Board, the charges appear to be groundless.

4. According to First Information Report lodged by the Superintending Engineer, Electric Supply Circle, Purnia, electric theft of electricity was committed by different accused persons on 15.01.2011 and during investigation and raid committed against those persons, it revealed that the officials of the Electricity Board posted thereat were negligent enough to allow electric theft being committed, which resulted in loss of revenue to the Board. The petitioners are office bearers of the Electricity Board.

5. The First Information Report was registered under Sections 119, 120(B), 379, 405, 406 and 420 of the Indian Penal Code as well as under Sections 150 and 135 of the Electricity Act and Section 7 and 13 (1) (d) of the Prevention of Corruption Act.

6. Learned counsel for the Vigilance though has not filed any counter affidavit, however, submits that charges have already been framed against the petitioners. Hence, this application against the refusal of prayer for discharge is practically infructuous now.

7. Learned counsels for the petitioners submit that one of the petitioner, *Prashant Kumar Manju @ Prasant Kumar Manjhi* had lodged K.Hat (Maranga) Police Station Case No.478 of 2011 on 16.10.2011 relating to electricity theft committed by one *Bablu Rai* of Chitragupt Nagar, Police Station- K.Hat, District- Purnia. Contention is that in the counter affidavit the Electricity Board i.e. respondent Nos.2 and 3 have admitted that other petitioners had also lodged First Information Report of electricity theft committed by different persons. Therefore, apparently there was no material to substantiate that petitioners were negligent in their duty. Moreover, for negligence the petitioners cannot be criminally prosecuted. Even the First Information Report reveals that electricity theft was being committed due to negligence of the petitioners. The First Information Report and the material collected during investigation does not show that the petitioners were in collusion with those persons in unauthorized use of electricity nor they had connivance with each other to allow theft of electricity. However, after investigation, the Police submitted charge sheet and the learned Magistrate without any material on the record took cognizance in the case.

8. Contention is that a disciplinary proceeding was also initiated against the petitioners and finding no evidence the petitioners were exonerated. At *Annexure 6* is letter of the Superintending Engineer, Electricity dated 28.01.2012, which has been admitted in the counter affidavit also, wherein the Superintending Engineer is specific that he was also part of the raiding team which was conducted in his presence and he found that the Officials of Electricity Board were actively participating in the raid and they earnestly lodged First Information Report against the persons who were involved in electricity theft.

9. Submission is that there is no material in the case diary to attract the ingredients of offences alleged. Hence, refusal of discharge is a mechanical order, violating valuable right of the petitioners and this issue can be decided for the ends of justice even after framing of the charges.

10. The case diary reveals that a letter written by Chief Engineer, Commercial to the petitioners was reproduced therein, whereby the petitioners were directed to be vigilant against those consumers whose electricity supply was already disconnected and against those consumers who were suspected to be using electricity in unauthorized way. Regular and monthly verification of the premise was to be ensured. The case diary further reveals that several F.I.Rs.' were lodged against the offenders on 15.10.2011 and thereafter.

11. In brief, there is no material to substantiate that the petitioners were conscious from before that electricity theft is being committed by named persons against whom First Information Report was lodged or they deliberately avoided to commit raid or to report the matter to the Police or any other competent Authority. There is lack of evidence to substantiate that the petitioners were in collusion with the defaulters, unauthorized user of electricity or among themselves in performance of their duty. Only material that has come against the petitioners is that they were suspected to be negligent in performance of their duty regarding monthly visit of different sites where electricity was being used.

12. I find substance in the submission of the learned counsels for the petitioners that only for negligence, criminal liability cannot be forced, unless there is material to substantiate mens rea on the part of the petitioners to allow commission of the offence alleged. The charge sheet has been submitted and cognizance has been taken against the petitioners for the following offences :-

Section 119 of the Indian Penal Code reads as follows:-

> *"**119. Public servant concealing design to commit offence which it is his duty to prevent.** —Whoever, being a public servant, intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent;*
>
> *[voluntarily conceals by any act or omission or by the use of encryption or any other information hiding tool, the existence of a design] to commit such offence, or makes any representation which he knows to be false respecting such design".*

Apparently, there is no material even to infer that the petitioners were intending to facilitate or were knowing that it be likely that they will thereby facilitate the commission of an offence which, it is their duty, as such public servant to prevent. The petitioners had actively lodged the First Information Report against the offenders. Even the Department in their counter affidavit have not controverted this situation, nor there is contrary material on the record.

13. Section 120B of the Indian Penal Code relates to punishment for offence of criminal conspiracy. There is no iota of evidence that the petitioners were indulged in criminal conspiracy with anyone. Section 379 of the Indian Penal Code relates to theft. The allegation of theft is not there against the petitioners. Hence, the petitioners cannot be prosecuted for the aforesaid offences. There is no allegation of entrustment of any property to the petitioners. Therefore, offence of criminal breach of trust under Section 405 or 406 of the Indian Penal Code are not made out against the petitioners. The prosecution has misconstrued the breach of trust and negligence of duty. The petitioners did not allegedly cheat anyone as there is no evidence that they were, at any point of time, having fraudulent or dishonest intention. Section 135 of the Electricity Act, 2003 relates to theft of electricity. There is no allegation against the petitioners that they have committed theft of electricity or abetted commission of the same. Section 150 of the Electricity Act also defines abetment of any offence punishable under the Act. There is no evidence at all that the petitioners abetted anyone for commission of any offence.

14. Apparently, none of the offences above are made out against the petitioners. Thus, they cannot be prosecuted thereunder. Only material against the petitioners is negligence in performance of official duty, for which they were departmentally proceeded with and have already been exonerated.

15. It has been informed that the department did not accord sanction for prosecution of the petitioners under Section 7 and 13 (1) (d) of the Prevention of Corruption Act. Hence, cognizance was also not taken thereunder. However, the learned court below has framed charge under the aforesaid sections also, which is bad in law, in view of the specific bar under Section 19 of the Prevention of the Corruption Act, which prohibits cognizance by a Court for offences under Sections 7, 10, 11, 13 and 15 in absence of previous sanction for prosecution.

16. In the case of ***Anand Kumar Mohatta and Another versus State (Govt. of NCT of Delhi) Department of Home and Another***, reported in ***2019 (1) P.L.J.R. (S.C.) 215***, the Hon'ble Supreme Court while considering the scope of exercise of inherent power under Section 482 of the Code of Criminal Procedure recorded in paragraph 17 of the judgment as follows:-

> *"17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the F.I.R. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C. even when the discharge application is pending with the trial court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of F.I.R. but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by F.I.R. stands aggravated if the F.I.R. has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court".*

17. Apparently, the power of this Court to prevent abuse of process of the court and miscarriage of justice is not fettered by the situation that the stage of the criminal proceeding has proceeded ahead after challenge of the impugned order, if a prima facie case is there to substantiate that no case is made out for criminal prosecution of the petitioners.

18. Since, as discussed above, none of the offences are made out against the petitioners. Hence, criminal prosecution of the petitioners would amount to abuse of process of the Court.

Accordingly, the impugned order and entire subsequent proceeding stands ***quashed*** and this application stands ***allowed***.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	AFR
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