

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 362 of 2005

Chandi Charan Garani @ Chandi Garani & Ors.

-Vs-

State of West Bengal

For the Petitioners: Mr. Debasish Roy,
 Mr. Phiroz Edulji.

For the State: None

Heard on: 8 November, 2021.

Judgment on: 8 November, 2021.

BIBEK CHAUDHURI, J. : –

1. The petitioners in CRR 362 of 2005 have approached this Court, inter alia, praying for quashing of the proceedings of GR Case No.610 of 2004, pending before the Court of the learned Sub-Divisional Judicial Magistrate, Tamluk arising out of Tamluk P.S Case No.181 of 2004 dated 12th August, 2004 under Section 135 of the Indian Electricity Act.

2. On 12th August, 2004, one P.K Patra, Station Manager, Kolaghat Group Electric Supply Office under West Bengal State Electricity Board (WBSEB) lodged a written complaint stating, inter alia, that on the selfsame date he being accompanied by police force attached to Tamluk

Police Station went to Jamitya to work out as to whether there was any theft of electricity in the said area or not.

3. During inspection the defacto complainant found that the petitioners were committing theft of electricity in their house by direct hooking through loose PVC wire connected with nearby overhead electric line of the WBSEB for illegal consumption of electricity. Seeing the vehicle of the Electricity Department with Police Force the petitioners fled away from the spot. The defacto complainant with the help of police personnel seized electric devices and equipments from the spot on proper seizure list, removed the loose wire used for hooking from the overhead electric line and handed over the said articles along with a written complaint against the petitioners to the Officer-in-Charge of Tomluk P.S.

4. On the basis of the said written complaint police registered Tamluk P.S Case No.141 of 2004 under Section 135 of the Indian Electricity Act, 2003 and Section 379 of the Indian Penal Code. On completion of investigation, police submitted charge-sheet against the present petitioners under Section 135 of the Indian Electricity Act.

5. The petitioners have challenged the legality and propriety of entire proceeding in GR Case No.610 of 2004 on the following grounds as revealed from the submission made by Mr. Debasish Roy, learned Counsel for the petitioners:-

First, it is submitted by Mr. Roy that the allegation against the petitioners is that they allegedly were consuming electricity by hooking from the overhead electric line of

WBSEB causing financial loss of the Board. However, the defacto complainant with the help of the police seized three numbers of ceiling fan, switch board, two numbers of tube light set and one bulb. No hooking device or loose electric wire allegedly used for hooking was seized by the defacto complainant. Therefore, the allegation against the petitioners that they were consuming electricity by hooking has prima facie no leg to stand.

Secondly, Mr. Roy submits that the Electricity Act, 2003 replaced the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and the Electricity Regulatory Commissions Act, 1998. This Act came into force on and from 26th May, 2003. Section 172 of the Act is a transitional provision which was directed to be operative for a period not exceeding one year from the date of the present Act coming into force. Thus, on the date of inspection, search and seizure in connection with Tamluk P.S Case No.141 of 2004 on 28th August, 2004, the defacto complainant had no authority to act in accordance with the repealed laws under the provision of Section 172. Mr. Roy also refers to Section 151 of the Electricity Act which deals with cognizance of offence and states as hereunder:-

151. Cognizance of offences.- No court shall take cognizance of an offence punishable under this Act

except upon a complaint in writing made by the Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose:

[Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under Section 173 of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided further that a special court constituted under Section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.]

6. According to Mr. Roy, the learned trial court cannot take cognizance upon police report under Section 151 of the Electricity Act as the first proviso to Section 151 came into force with effect from 15th June, 2007.

7. Mr. Roy also draws my attention to the order dated 6th January, 2005 and submits that the Sub-Divisional Magistrate, Tamluk did not apply his judicial mind while taking cognizance of offence against the petitioners/accused persons.

8. The State of West Bengal, the opposite party herein is found absent when the matter was called on for hearing. Since the instant revision is

pending from 2005, I am inclined to dispose of the instant revision on the basis of the submission made by the learned Advocate for the petitioners.

In **Pradip Churiwala & Anr. vs. Dilip Kumar Nemani** reported in **2003 C Cr LR (Cal) 249** the learned Single Judge held that the word cognizance which has not been defined in the Code of Criminal Procedure would entail that the same has been taken as soon as the learned Magistrate applies his mind in order to proceed to a certain direction. Paragraph 10 of the aforesaid report is relevant and is reproduced below:-

“10. It is also the principle in Section 190 of the Code of Criminal Procedure the word may take cognizance should be read as must as it has some mandatory aspect. At the same time it requires a great exercise of judicial mind. Taking of cognizance is not a mechanical process or a delivery system in the post office that simply an approval of the learned Court would be given on a petition without application of proper mind. That is not the intention of the legislature as would be evident from the provision of Section 190(a) of the Code of Criminal procedure which shows the learned Magistrate can proceed on a certain direction upon receiving a petition of complaint of facts which constitutes such offence. Now the question whether it constitutes certain facts or whether there is a prima facie case persists an exercise of judicial mind is pre-imminently required and the same cannot be surrogated to a mechanical process. Although we are now in the age of the automation, but justice delivery system which requires an application of mind cannot be transferred and the powers of a decision making in the said system cannot delegated to either a mechanical process or to a machine.”

9. In a subsequent unreported decision in CRR 602 of 2017 with CRR 1341 of 2017, Bagchi, J. in his eloquent judgment dated 27th July, 2017 held as hereunder as:-

I have noted with grave concern the practice of recording orders with the assistance of police personnel attached to the General Registrar section or otherwise is not only illegal but affects the independence of judiciary and the constitutional mandate of separation of judiciary from the executive. Rule 183 of Calcutta High Court Criminal (Subordinate Courts) Rules, 1985 lays down the procedure for recording judicial orders which reads as follows:-

“R.183. Orders requiring the exercise of judicial discretion and the final order shall be recorded by the Magistrate in his own hand or typed by him, 15 others may be recorded under his direction by the Bench Clerk.”

Accordingly, I deem it necessary to pass the following directions in exercise my powers of superintendence for future guidance of the criminal courts:-

- (a) Judges/Magistrates shall record orders strictly in terms of Rule 183 of the Criminal Rules and Orders (Sub-ordinate Court Rules), 1985.*
- (b) Alternatively, in view of the technological advancement and the availability of personal computers/laptops to the judicial personnel, they may also transcribe their orders on the computers and take a printout thereof and upon affixation of their signature thereto, the said hardcopy shall be*

treated as a valid transcription of the order passed by the said court.

(c) Under no circumstances, any judicial officer shall take assistance of any external agency particularly police officers in the matter of recording and/or transcribing orders of the Court.

(d) Any breach of such duty shall invite departmental proceeding so far as the judicial personnel is concerned.

Registrar General of this Court shall circulate these directions to all Judges/Magistrates for necessary compliance. Director, State Judicial Academy shall ensure that necessary training is imparted to judicial officers attending the academy so that judicial orders are duly recorded in the manner as indicated above.

10. Coming to the instant case it appears that entire order of taking cognizance dated 6th January, 2005 by the learned Sub-Divisional Magistrate, Tamluk was written by one person and the learned Magistrate filled up the gap after the words “cog is” by writing the word “taken”. The order dated 6th January, 2005 does not reflect application of judicial mind by the learned Magistrate. Had it been so, the learned Magistrate ought not to have taken cognizance on perusal of the copy of the seizure list when his allegation against the petitioners was commission of theft by hooking and no hooking device was seized.

11. For the reasons stated above this Court is of the view that the order dated 6th January, 2005 being passed without application of any judicial

mind is *non est* in the eye of law. Taking of cognizance being illegal, subsequent proceeding would also be vitiated with illegality.

12. Therefore, on the ground of defect in taking cognizance of the case which goes to the very root of the matter, the proceeding in GR 610 of 2004 cannot be said to be in order and is accordingly quashed.

13. The instant revision is thus allowed, however, without cost.

(Bibek Chaudhuri, J.)