

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA  
Criminal Revisional Jurisdiction  
Appellate Side

Present:  
The Hon'ble Justice Jay Sengupta

CRR 199 of 2022

Abul Hasan @ Md. Abul Hussain and others  
Vs.  
The State of West Bengal & Anr.

For the Petitioner : Mr. Sabyasachi Chatterjee  
Mr. Imtaiz Ahamed  
Mr. Sandipan Das

Heard on: : 27<sup>th</sup> January, 2022

Judgment on : : 27<sup>th</sup> January, 2022

**The Court:**

This is an application seeking quashing of an investigational proceeding under Section 427 read with Section 34 of the Indian Penal Code and Section 138 of the Electricity Act.

Learned Counsel appearing for the petitioner submits as follows. The petitioners were engaged in protests against the CESC for trying to make overhead connection for electricity lines. For this, the petitioners were targeted unfairly and cases were started against them. They are absolutely innocent. The de facto complainant had no authority to enquire or investigate into the offences. This investigation

means nothing so far as the criminal proceeding is concerned. No prima case is made out against the petitioner as would be evident from the plain reading of the FIR. The ingredients of Section 138 have not been clearly made out in the factual matrix of the case. Any further continuation of the impugned proceeding shall be an abuse of process of law.

I have heard the submissions of the learned counsel appearing for the petitioner and have perused the revision petition.

First, whether a de facto complainant conducts his own inquiry or not before lodging a First Information Report is not relevant. It is settled law that if an informant lodges a First Information Report alleging a cognizable offence, then a First Information Report has to be registered. Thereafter, it becomes the duty of the investigating agency to investigate into the case. This is exactly what appears to have been happened in the present case.

The power of the police officer to investigate into an offence under the Electricity Act and of a learned court to take cognizance on a police report are clearly delineated in Sections 151 and 151-A of the Electricity Act.

From a plain reading of the FIR, it appears that a prima facie case is made out under Section 138 (1) (d) of the Electricity Act and Section 427 of the Penal Code. It is clearly alleged there that the

accused were responsible for the damage caused to the electrical network of electricity company.

Even without going into the question of whether mala fide alone can be a ground for quashing an investigational proceeding, it is abundantly clear that no discernible case of mala fide has been made out against the de facto complainant in the instant case.

Besides, whether the accused is innocent or not is a disputed question of fact that can only be decided during trial.

The case is at the stage of investigation. As such, I find no reason to interfere with the same at this stage.

Accordingly, the revisional application is dismissed.

There shall, however, be no order as to costs.

The petitioners shall be at liberty to raise all the points taken up in this application before the learned Trial Court at an appropriate stage.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

**(Jay Sengupta,J.)**