

Form J(1)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

**Present :
The Hon'ble Justice Bibek Chaudhuri**

**CRR 206 of 2022
with
CRAN 1 of 2022**

**Shambhu Nath Shil
Vs.
The State of West Bengal & Anr.**

For the petitioner : Mr. Subrata Bhattacharjya
Mr. Ndranuj Datta

For the State : Mr. Arijit Ganguly
Ms. Debjani Sahu

For the WBSEDCL : Mr. Aniket Mitra

Judgement on : 29.07.2022.

Bibek Chaudhuri, J.

The petitioner is the accused in Special Case No. 108 of 2019 arising out of Bhatar Police Station Case NO. 85 of 2019 dated 8th February, 2019 under Sections 135(i)(a) of the Indian Electricity Act 2003. The above named case was registered on the basis of a written complaint filed by one Subhas Chandra Karmakar, Divisional Engineer (E), S & LP, Burdwan Regional Office of WBSEDCL. In the written

complaint it is alleged that on 8th February, 2019 the complainant along with other employees of WBSEDCL, S & LP wing, Burdwan Regional Office conducted a raid to find out illegal consumption of electricity at Nanabnagar Math within the jurisdiction of the said police station.

During raid they found that one submersible pump owned by Sambhunath Shil was in operation taking illegal electric connection by way of overhead hooking for the purpose of irrigating the adjoining land. Accordingly, the said submersible pump and apparatus of hooking were seized by the de facto complainant and a written complaint was filed by him. On the basis of the said written complaint a case under Section 135(i)(a) of the Indian Electricity Act 2003 was registered and on completion of investigation police submitted charge-sheet against the petitioner.

The petitioner has prayed for quashing of the charge-sheet and the proceeding in Special Case No. 108 of 2019 which has been registered on the basis of the charge-sheet filed in Bhatar Police Station Case No. 85 of 2019. It is contended on behalf of the petitioner that the petitioner is not the owner of the submersible pump, which was allegedly seized by the de facto complainant. Secondly, he was not the owner of the land from where the said submersible pump was recovered

and thirdly he was not present at the spot when the said submersible pump and other apparatus of hooking was registered. The investigating officer failed to collect any document during trial to *prima facie* prove the ownership of the seized submersible pump or the ownership of the land which was being irrigated by water through the seized submersible pump.

The learned PP in-Charge, on the other hand produces the Case Diary. He refers to the statement recorded by the investigating officer of the de facto complainant and other witnesses.

I have carefully perused the Case Diary. It is true that the investigating officer could not collect or seize any document to prove the ownership of the submersible pump or the ownership of the land from where the said submersible pump was seized.

At the same time this Court is not unmindful to note that on filing of charge-sheet, *prima facie* case has been established against the petitioner. the petitioner can very well take all the points which has been agitated before this Court at the time of framing of charge against him. If there is no material to frame charge, it is within the jurisdiction of the learned Special Judge to discharge the accused.

It is submitted by the learned advocate for the petitioner that the Trial Court has already issued warrant of arrest against the petitioner and if he surrender before the Trial Court and prays for bail he would be directed to deposit a considerable amount towards electricity charges as pre-condition for bail. It is further contended by the learned advocate for the petitioner that the petitioner is a poor man. It is not possible for him to pay any money as condition for bail, moreover he has not committed any offence under the Electricity Act and therefore question of payment of electricity charges before considering the fact as to whether the petitioner is the owner of the seized submersible pump and the land which was irrigated by the said submersible pump, does not arise. If such condition is imposed at the time of enlarging the petitioner on bail, he will suffer financially without any wrong being committed by him.

Considering the entire facts and circumstances of the case and keeping in mind the apprehension of the petitioner as ventilated by his learned advocate before this Court, the instant revision is disposed of directing the Trial Court to consider the application for bail of the accused/petitioner on his surrender without imposing any condition with regard to payment of electricity charges allegedly consumed by him as a condition for granting bail.

The learned Special Judge is further requested to consider as to whether the petitioner is the owner of the submersible pump; whether the place of occurrence from where the submersible pump was seized is owned by the petitioner; whether the land which was irrigated through the seized submersible pump is owned by the petitioner or not. After considering all such aspect of the matter and also taking into consideration whether there was any occasion for the petitioner to illegally consume electricity at the place of occurrence, the learned Trial Judge will pass necessary order with regard to framing of charge against the petitioner.

With the above direction, the instant revision is **disposed of**.

Let the Case Diary be returned.

(Bibek Chaudhuri, J.)