

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 154 of 2007
with
CRR 384 of 2007

BANSHI DHAR NANDY & ORS.
VS.
THE STATE OF WEST BENGAL & ANR.

For the Petitioners	: Mr. Bibaswan Bhattacharyya, Adv. Mr. Amal Kumar Saha, Adv. Mr. I. Paul, Adv.
For the Opposite Party No. 2	: Mr. Jayanta Narayan Chatterjee, Adv. Ms. Moumita Pandit, Adv. Ms. Nandini Chatterjee, Adv. Mr. Nazir Ahmed, Adv. Mr. Supreem Naskar, Ms. Jayashree Patra, Adv. Ms. Ritushree Banerjee, Adv. Ms. Pritha Sinha, Adv. Ms. Dipanwita Das, Adv. Mr. Srinjan Ghosh, Adv. Mr. Subhrajit Dey, Adv.
For the State	: Mr. S.G. Mukherjee, Id. P.P. Mr. Imran Ali, Adv. Mr. Debjani Sahu, Adv.
Hearing concluded on	: 15 th November, 2022
Judgement on	: 29 th November, 2022

Siddhartha Roy Chowdhury, J.:

1. This proceeding stems out of an application under Section 482 of the Code of Criminal Procedure filed by the petitioners for quashment of Jaipur P.S. Case No. 57 of 2006 dated 27th December, 2006

registered under Section 135 (i)(b)(c) of the Indian Electricity Act, 2003 being G.R. Case No. 375 of 2006.

2. Briefly stated, the petitioners have been carrying on the business of a small Rice Mill under name and style M/s Nandi Rice Mill at Saintara, Police Station – Kotulpur, Bankura. The West Bengal Electricity Board has provided the petitioners with the electricity. The petitioner has been paying electric bill as per consumption recorded in the Meter provided by WBSEB (as then was). The meter being No. SB983187 was installed long back and it was found defective in the month of October, 2006, when the Meter got burnt. Soon after the incident, intimation was given to the Officer of WBSEB. The electric line was disconnected on 12th October, 2006. The petitioners along with co-owners approached the WBSEB for restoration of electric line, after providing a new meter. WBSEB under letter dated 16th October, 2006 intimated the petitioners that the electric line would be restored and defective meter would be kept in the custody of the petitioner. Instruction was given to pay cost of the meter which was complied with and electric line was restored on 16th October, 2006. After the restoration of electric line the old meter was handed over to the petitioner by the Officer of the WBSEB. It was kept in an iron box known as pilferage box. At that point of time the board did not make any allegation regarding tampering of seal of the said box. The seal of the Meter in question got damaged due to accident caused by fire. The petitioners had no role to play in the matter, however, on 27th December, 2006 the Officers of the Board came to the Mill premises, made certain inspection, and took photographs without allowing any of

the petitioners or their representatives to remain present at the time of inspection. Thereafter, a criminal case was initiated against the petitioners under Section 135 (i)(b)(c) of the Electricity Act. Police had no authority to investigate any offence in terms of Section 151 of the Indian Electricity Act and no Court was competent to take cognizance of the offence investigated by the police authority. Section 151 of the Electricity Act, 2003 enunciates that no court shall take cognizance of any offence under this Act except the petitioners by writing, by appropriate government or commission or any other officer authorized by them or a Chief Electrical Inspector or licensee or generating company as the case may be for the purpose. According to the petitioners if the present case is allowed to be continued there will be no end to their sufferings.

3. It is further contended that offence of theft of energy is compoundable in nature. The entire intention of the legislature shall be frustrated if the officers of the board are allowed to lodge complaint with the police. The meter got damaged due to accidental fire. It is adverted that no one should be prosecuted in the name of prosecution which would otherwise infringe the right to life of the person at the receiving end, as enshrined under Article 21 of the Constitution.
4. The petitioners are seeking quashment of the proceeding being G.R. Case No. 375 of 2007 arising out of Jaipur P.S. case no. 57 of 2006 dated 20th December, 2006 under Section 135 (1)(b)(c) of Indian Electricity Act.
5. Though the Authority of police to register a case was challenged while advancing his argument learned Counsel for the petitioners Mr.

Bibaswan Bhattacharyya submits that Section 151 of the Electricity Act, 2003 has been amended w.e.f. 1^{5th} June, 2007 empowering the Court to take cognizance upon the police report under Section 173 of the Cr.P.C. and Co-ordinate Bench of this Court held that this amendment should be given retrospective effect.

6. It is adverted by Mr. Bhattacharyya that considering the age of the petitioners as well as the proceeding, this lis may be brought to an end before this Court. The petitioners being senior citizens do not even have the physical ability to pursue the case before the learned Trial Court.
7. Drawing attention of the Court regarding the conduct of the petitioners Mr. Bhattacharyya submits that being honest citizen the petitioners have been discharging their obligation as consumers of electricity by paying the bill in time, even they paid the amount assessed by the Board subsequent to accident, while restoring the connection. The meter got tampered due to accident and nothing can be attributed to the petitioners for such accidental damage. However, the petitioners had paid a sum of Rs. 4,16,394 /- in consonance with the order passed by the Appellate Committee. Hence, the proceeding may be dropped.
8. Learned Counsel for the petitioners further submits that after the accident by fire the petitioners informed the West Bengal State Electricity Board and the power of the Rice Mill was restored by the Board immediately thereafter on payment of Rs. 9100/-. The defective meter was directed to be kept in the custody of the petitioners for final checking by the competent officer of the Board, by letter dated 16th

October, 2006, while police was informed on 17th December, 2006 after more than two months. On that day physical inspection was held by the authorized men of the Board and on physical inspection the meter was found to be tampered. The petitioners being the owners of the Rice Mill were held responsible for such damage while admittedly the damage was caused by fire. Therefore, according to Mr. Bhattacharyya there was no reason to saddle the petitioners with the criminal liability for committing offence within the meaning of Section 135 of the Electricity Act, 2003.

9. Refuting such submission of learned Counsel for the petitioners, Mr. Jayanta Narayan Chatterjee, learned Counsel representing the Opposite Party submits that Section 135 of the Electricity Act, 2003 is about theft of electricity and the provision of Sub-Section 1 (b) enunciates that whoever dishonestly tampers a meter, installed or used a tamper meter, current reversing transformed, like connection or any other device or method which interferes with accurate or proper rules, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted shall be punishable as per statute.
10. Here admittedly fire broke out resulting into damage of the electric meter being no. SB983187 and the line was disconnected on 12th October, 2006. The power was restored upon payment of prescribed fees and the damaged meter was kept in the custody of the consumer until final checking by the competent authority. On 27th December, 2007 the said checking was done only to find out that all the seals of the meter were tampered. Rough soldering with resine was found in the

C.T. Secondary Terminal inside the meter, such mischief was caused to evade proper metering indicating actual consumption. Therefore prima facie there is every reason to presume the complicity of the petitioners in this alleged tampering of meter.

11. According to Mr. Chatterjee, the offence within the meaning of Section 135 of the Electricity Act is compoundable. The petitioners may approach the learned Trial Court for compounding of the offence or may stand trial. The Opposite Parties since registered the complaint following procedure established by law, the same should be allowed to reach its rational conclusion before the learned Trial Court. Petitioners should join the trial as they are claiming innocence.
12. It is fact that after inspection of meter the competent authority detected certain features like soldering of meter as abnormal and rough soldering with resine in the C.T. Secondary Terminal was found. It was done to evade the liability of paying the tariff for the energy actually consumed. This inspection of meter was duly video-graphed by the persons examined the damaged meter. Such inspection report is the basis of the prosecution taken out by the Opposite Party.
13. There is nothing to indicate that the proceeding before the learned Trial Court is a manifestation of abuse of process of law. The application for revision is dismissed on contest but without cost. Application pending, if any, stands vacated and interim order, if any, stands disposed of.
14. Therefore, I do not find any reason to invoke the jurisdiction conferred under Section 482 of the Criminal Procedure Code to quash the proceeding only because it is pending against senior citizens.

15. Let a copy of this judgement be sent down to learned Trial Court along with lower Court record for information and taking necessary action.
16. Parties are to act on the server copy of this judgement.
17. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)