

28.11.2022
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SB
Ct. No.236

CRR 1325 of 2009

In the matter of : Smt. Kirti Lakhotia

Mr. Sandipan Ganguly
Mr. Dipanjan Dutt ... for the petitioner

Md. Anwar Hossain
Ms. Manisha Sharma ... for the State

Ms. Sreyashee Biswas ... for WBSEDCL

This revisional application under Section 482 of Code of Criminal Procedure assails the proceeding pending before the learned Special Judge, Barrackpore being Special Case No. 67/08 which arose out of corresponding proceeding in Barrackpore P.S. Case No. 41 dated 16.7.2002.

Briefly stated one Mr. A.K. Palith, Divisional Engineer, Barrackpore Electric Supply on 15.7.2022 informed the Officer-in-Charge of Barrackpore Police Station that on 15.7.2022 at about 1.30 P.M. he conducted an inspection at premises of petitioner M/S. L.C.C. Infotech Ltd. at 63, Barrack Road, Police Station in presence of Divisional Engineer and found that M/S. L.C.C. Infotech Ltd. has been consuming electricity from the service connection of M/S. Davy Hibson (P) Ltd. and M/S. Hiralal Institute of Refrigeration and Air Condition Technology in an unauthorized manner. According to the informant the Managing Director of L.C.C. Infotech Ltd. committed an offence within the meaning of Section 39(1)(a) of the Indian Electricity Act. Police accordingly registered Barrackpore P.S. Case No. 41 dated

16.7.2002 and took up investigation which culminated into submission of charge sheet against the accused persons. Learned Trial Court on 14.8.2002 was pleased to hold that “the documents speak that after receiving money / revenue the authority has settled the matter and the matter be compounded.” With these observations, the learned Trial Court enlarged the accused on bail.

Mr. Sandipan Ganguly, learned senior counsel representing the petitioner placed his reliance upon Section 39(A) of Indian Electricity (West Bengal Amendment) Act , 1910. Mr. Ganguly, further submits that there is no ingredient of offence within the meaning of Section 39(1)(a) of the Indian Electricity (West Bengal Amendment) Act, 1910 to indicate that the accused person took the electric energy by tapping, with overhead, underground or underwater lines or cables or service wires or service facilities of electricity utility.

The accused person only took the electric energy from the consumers adjoining to the premise occupied by the accused to run the factory.

Refuting such contention of Mr. Ganguly, Ms. Biswas learned counsel representing the WBSEDCL submits that in absence of any cogent document indicating the payment of revenue / money it cannot be said to treat this lis in the light of Section 39(E) of the Indian Electricity Act.

Ms. Biswas, submits a report of Station Manager of Barrackpore, WBSEDCL addressing AGM, HR of WBSEDCL expressing his inability to indicate anything on the factual aspect for want of proper record. True it is that the learned Trial Court

while considering the application for bail of the accused person considered one document and came to a finding that revenue was paid by the accused person and the authority has settled the matter, the learned Trial Court observed that the matter be compounded. Since this is a judicial order presumption of correctness can always be drawn and it can further be presumed that the accused person paid the amount.

Ms. Biswas submits that there is a person authorized to compound any offence in WBSEDCL. In absence of any document whatsoever it is really difficult to understand whether the authorized officer exercised his jurisdiction to settle the dispute. Therefore, it may not be expedient for this Court to quash the proceeding under Section 482 of the Code of Criminal Procedure. The Divisional Engineer who set this criminal proceeding into motion categorically stated in his petition of complaint that the accused M/S. L.C.C. Infotech Limited was not using electric energy as a consumer under the WBSEDCL but he was consuming the electric energy through another consumer which was not permissible. Admittedly the consumers who allowed the L.C.C. Infotech Ltd. to enjoy electric energy are not arrayed as accused persons. Therefore, there is every reason to presume that no act of abatement was done by those consumers namely, M/S. Davy Hibson (P) Ltd. and M/S. Hiralal Institute of Refrigeration and Air Condition Technology. The allegation so made by the Divisional Engineer Mr. A.K. Palith does not disclose any offence within the meaning of Section 39(1)(a). There is no theft of electric energy but there was using of electric energy unauthorisedly from

consumers without affecting the interest of WBSEDCL as there was no allegation of mischief committed within the meaning of Section 39(1)(a) of the Indian Electricity Act 1910.

After going through the document it was observed by learned Trial Court that upon receipt of money / revenue the authority has settled the matter and the matter to be compounded, such observation of learned Trial Court indicates that the formal order of compounding of offence was not passed at that point of time by the appropriate authority in WBSEDCL. With the efflux of twenty years it is expected and presumed that the compounding authority or authorized person in WBSEDCL has settled the matter and compounded the offence if any. I do not find any reason to keep this matter alive when the financial interest of WBSEDCL has been taken care of.

The proceeding pending before the learned Trial Court is hereby quashed with liberty to WBSEDCL to draw up proceedings to realise if anything is due to the company from the petitioner with regard to this particular issue.

The copy of the order be sent down to the learned Trial Court for information and necessary action.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury, J.)