

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.3793 of 2012

The Executive Engineer, Western Petitioner
Electricity Supply Company of
Orissa Ltd., Rajgangpur,
Sundargarh.

M/s. Prasanta Ku. Tripathy, S. Pattanayak,
D. Ch. Pahari, Advocates

-versus-

State of Odisha & another. Opposite Parties
Addl. Standing Counsel – For O.P. No.1-State
None – For O.P.No.2

CORAM:
JUSTICE S. PUJAHARI

ORDER
23.08.2022

Order
No.

07. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) seeking for quashing of the orders dated 13.10.2011 and 10.04.2012 passed by the learned J.M.F.C., Rajgangpur in I.C.C. No.24 of 2011 taking cognizance of the offences under Sections 427, 448 and 467 of IPC and framing charge of the said offences against the petitioner.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the State-opposite party no.1. None appeared on behalf of the opposite party no.2 to participate in the hearing.

3. The prosecution vide the case referred to above has been launched pursuant to a complaint being filed by the opposite party no.2-complainant on the accusation, inter-alia, that in the aftermath of attachment of his printing press named “M/s. MOONLIGHT PRINTING PRESS” at Press Road, Dheula, Rajgangpur, by the Sales Tax Authority, the power supply to the said unit had been disconnected pursuant to his request, and although he had further requested through writing to the accused-petitioner (the then Executive Engineer), WESCO, Rajgangpur Electrical Division) not to allow anyone else to avail power supply in the said premises, the petitioner unauthorisedly gave electric connection to another unit namely, “M/s. Maheswari Printing Press” on 11.10.1991 by making forceful entry to the premises

of the complainant, and by entering into an illegal agreement with the aforesaid unit. It is further alleged that when he challenged the electric bill issued by the accused, the latter disconnected the electric supply to the Printing Press of the complainant, even after the press was released from attachment, and insisted the complainant to execute a fresh agreement which was contrary to law. Alleging that the petitioner illegally diverted the consumer number of the complainant to another unit, converted the valuable security of the complainant by committing mischief and forgery to his mental, financial and physical detriment, the complainant filed the complaint. On the basis of the complaint and statement of the complainant under Section 200 Cr.P.C., cognizance was taken by the learned J.M.F.C., Rajgangpur vide the order dated 13.10.2011 and framed charge for the said offences against the accused-petitioner vide the order dated 10.04.2012. Hence, the present application by the petitioner.

4. It is the contention of the learned counsel for the petitioner that even if the whole of the facts pleaded and allegations brought by the complainant are considered in their face value, no offence is made out against the petitioner, and that since he took the action in relation to the power supply pertaining to the Printing press of the complainant as well as M/s. Maheswari Printing Press in course of discharge of his official duty, no prosecution could have been launched against him in absence of the requisite sanction under Section 197 of Cr.P.C. The learned counsel further submits that since M/s. Maheswari Printing Press was occupying the premises by taking possession of the same through OSFC on 10.09.1991, power supply had been given to the said Press / Consumer on the basis of his occupancy right in accordance with the provisions of law, and the power supply to the unit of the complainant had been disconnected for non-payment of the arrear outstanding which was paid by the complainant on 20.02.2007 after he lost litigating battles. He further

submitted that since the agreement executed by the complainant had been terminated with effect from 17.09.1997 for default on his part, he was requested to execute a fresh agreement as per the OERC Regulations. With the facts as above, it is urged on behalf of the petitioner for quashing of the impugned orders of cognizance and framing of charge.

5. The learned counsel for the State, on the other hand, submits that since the case before the Court below has already reached the trial stage, the accused-petitioner should agitate the questions as raised by him here, before the trial Court, through cross-examination of the complainant's witnesses or through his defence evidence, and that this Court should not interfere with the impugned orders.

6. Admittedly, the petitioner at the relevant time was a public servant, and as it appears from the very averments of the complaint, he took the action in purported exercise of his official duty. The learned

Court below being oblivious of the provision of Section 197 of Cr.P.C. has not dealt with the question as to whether prior sanction was necessary or not for launching the prosecution against the petitioner-public servant. That apart, as it appears, before filing the present complaint, the complainant had challenged the demand of arrear bill amount before Bijuli Adalat, Consumer Disputes Redressal Forum, Cuttack and for restoration of power supply he also filed a civil case bearing Money Suit No.68 of 1995. Admittedly, his Printing press for some period of time remained under attachment and as reported, M/s. Maheswari Printing Press took possession of the premises through OSFC. From all these facts, it appears that the steps taken by the petitioner had become the subject of scrutiny in Civil Suit as well as other quasi judicial proceedings. The allegations as made hardly make out any prima-facie case against the petitioner for the offences alleged. Hence, the impugned order needs interference.

7. In the result, the CRLMC stands allowed. The impugned orders as well as the consequential proceeding in I.C.C. No.24 of 2011 stand quashed qua the petitioner.

8. Urgent certified copy of this order be granted on proper application.

(*S.Pujahari*)
Judge

MRS

