IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4769 of 2015

Pareswara Panda @ Paraswar Pradhan and others .... Petitioners

Mr. Asit Kumar Choudhury, Advocate

-Versus-

State of Odisha .... Opposite Party

Mr. Manoranjan Mishra, ASC

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:30.11.2022

1. Instant petition under Section 482 Cr.P.C. is at the behest of the petitioners for quashing of the criminal proceeding in T.R. No.69 of 2012 pending in the file of learned 2nd Additional District Judge-cum-Special Judge (Electricity), Bhubaneswar as against them on the grounds inter alia that the same is not tenable in law in view of the fact that there is no allegation showing their involvement in so far as abstraction of electricity is concerned which has been alleged and primarily directed against the proprietor of the establishment, namely, M/s. Manakshya Associates Pvt. Ltd. or M/s Shanti Auto Pvt. Ltd.

2. It is claimed that the petitioners at the relevant point of time to be the employees working in the above named establishment run and managed by its proprietor, namely, Ashok Kumar Agarwalla. According to the petitioners, the abstraction of power was alleged against the proprietor of the factory by tampering the meter, as a consequence whereof, a report was lodged by the Deputy Manager (Commerce), Rasulgarh Sub-Division, CESU, whereupon, Special P.S. Energy BBSR No.95 dated 14th September, 2010 was registered under Sections 135 and 138 of the Electricity Act, 2003 but they did not have any role play, however, at the end of the investigation, the chargesheet was submitted implicating them along with the factory's proprietor, namely, Mr.Ashok Kumar Agarwalla, which is without any basis and outrightly unjustified.

3. The CESU staff said to have conducted a surprise inspection of the unit of the principal accused being run from the premises of M/s. Shanti Auto Private Limited which stand in the name of one Mr. Bimal Prasad Pattnaik and during such visit, it was detected that there was diversion of power dishonestly with the help of a remote circuit, whereafter, the FIR was lodged and in course of investigation, the petitioners were arrested and forwarded to the court and later released on bail. The principal accused along with the petitioners were finally chargesheeted under the alleged offences.

4. Heard Mr. Ajit Kumar Choudhury, learned counsel for the petitioners and Mr.Manoranjan Mishra, learned ASC for the State.

5. It has been pleaded by the petitioners that as a result of abstraction of electricity, the supply to the unit was disconnected after a notice dated 14th September, 2010 and then a provisional assessment was made and the loss was estimated by CESU and in that connection, an amount of Rs.6,65,506/- was deposited to make the loss good. It is further claimed that CESU thereafter entered into a fresh agreement with the same establishment without whispering anything about the alleged incident. In support of such contention, the petitioners furnished copies of the documents, such as, provisional order (Annexures-2), disconnection notice (Annexures-4) and a receipt dated 23rd September, 2010 (Annexures-5) showing deposit of the estimated

amount. The claim of the petitioners is that there was no material to directly connect them with the mischief.

6. The Court finds that after the chargesheet was filed in the year 2011 against the petitioners and the proprietor of the factory, the learned court below by order dated 18th February, 2011 took cognizance of the offences under Section 135 and 138 of the Electricity Act. Admittedly, the petitioners were arrested after the report was lodged. Such arrest was caused on detection and in connection with abstraction of power.

7. Mr. Choudhury, learned counsel appearing for the petitioners submits that the involvement of the petitioners cannot be alleged when the abstraction of power is alleged to be in a factory which is run and managed by the main accused, namely, the proprietor, however, without any reason, they have been chargesheeted. Mr. Mishra, learned ASC on the other hand would contend that on the basis of the materials collected during investigation and filed along with the chargesheet, the learned court below took cognizance of the offences against the petitioners and therefore, it would not be unreasonable to claim that they were not involved in the illicit activity of abstraction of power. According to Mr. Mishra, learned ASC, there appears to be material before the learned court below to hold the petitioners as well as the proprietor to be responsible for the alleged mischief.

8. It is not drawn to the attention of the Court as to what was the evidence collected during the investigation and if at all the petitioners did play any role in tampering the meter. Whether the petitioners as the employees of the factory committed any mischief with the connivance of the proprietor would have to be examined from the evidence collected during investigation. Nothing has been brought to the notice of the Court to show about the nature of involvement of the petitioners. The

disconnection of power supply to the unit and deposit of an amount estimated by CESU could indicate that there was probably diversion of electricity. It depends on the nature of evidence gathered in course of investigation and material collected during the spot inspection by the CESU to find out and ascertain as to who was responsible for the said overt act. So far as the filing of chargesheet and taking cognizance of the offences by the learned court below is concerned, it would depend on the materials on record. It is reiterated that the relevant evidence collected during investigation would have to be verified to elicit the involvement of the petitioners. For what reasons, the petitioners were arrested in connection with the incident post inspection of the unit by the CESU is a matter of enquiry when they, at that point of time, were the employees of the said unit. In other words, the participation or otherwise of the petitioners in the abstraction of power shall have to be examined considering the totality of the evidence gathered during investigation and submitted to the court below. Nothing is drawn to the attention of the Court by the State to show the manner of participation of the petitioners in such illegal activity morefully when the proprietor of the unit is also an accused, an exercise which is needed to be freshly undertaken by the court below.

9. Accordingly, it is ordered.

10. In the result, the CRLMC stands disposed of with a direction to the learned 2nd Additional Sessions Judge, Bhubaneswar in T.R. No.69 of 2010 to examine the evidence on record submitted along with the chargesheet to differentiate the role if any played by the petitioners apart from the proprietor of the unit for the purpose of proceeding against them since nothing has been brought to the notice of the Court nor it did have the benefit of any such material for scrutiny and examination and thereafter, to

pass appropriate order as per and in accordance with law since any such prosecution without incriminating substance would be a travesty of justice.

11. As a necessary corollary, the order of cognizance dated 18th February, 2011 passed in T.R.No.69 of 2012 by the learned 2nd Additional District Judge-cum-Special Judge (Electricity), Bhubaneswar is hereby set aside qua the petitioners. If the learned court below finds adverse materials prima facie to proceed against the petitioners, it shall do well to consider framing of charge for which it had originally fixed as made to reveal from the order sheets under Annexure-7.

(R.K. Pattanaik)
Judge

U.K.Sahoo