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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 112 of 2016

Prasanna Kumar Panda and Another .... ***Petitioners***

Mr. Asok Mohanty, Senior Advocate

-versus-

State of Odisha and Others .... ***Opposite Parties***

Mr. J. Katikia, Addl. Govt. Advocate
Mr. Prasanta Kumar Tripathy, Advocate

CORAM:
THE CHIEF JUSTICE

ORDER

Order No. **14.10.2022**

Dr. S. Muralidhar, CJ.

06. 1. The present petition has been filed by two employees of the Essel Mining and Industries Ltd.; one being the Unit head and the other Manager, C.S.R. seeking to quash G.R. Case No.220 of 2015 pending in the Court of learned S.D.J.M., Keonjhar.

2. At the time the notice was issued in the present petition on 21st June, 2018; the further proceedings in the aforementioned criminal case was stayed by this Court.

3. A copy of the F.I.R. lodged by the complainant, North Eastern Electricity Supply Company of Odisha Limited (NESCO) has been enclosed as Annexure-1. The complaint has been lodged by the Sub-Divisional Officer, Barbil Electrical Sub-Division of NESCO. In the very first line, it is stated that confidential information had been received that *"M/s. Essel Mining and Industries Ltd., Barbil dishonestly availing electricity by hooking process from nearest*

LT mains at 15 nos different borewell points under Barbil Electrical Sub-Division".

4. Although the FIR states that it is the company that has committed the offence under Section 135 of the Electricity Act ('Act'), the case was not registered against the company but only against two of its employees i.e. the present Petitioners.

5. Section 149 of the Act reads as under:

> ***"149. Offences by companies.-***
>
> 1. Where an offence under this Act has been committed by a company, every person who at the time of offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
>
> 2. Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.
>
> Explanation: For the purposes of this section,--

a. "company" means a body corporate and includes a firm or other association of individuals; and

b. "director", in relation to a firm, means a partner in the firm."

6. It is plain from the above provision that where an offence is alleged to be committed by a company, then the company as well as the persons who are in charge of and responsible to the company for the conduct of its business have to be arraigned as accused. Without the company being arrayed as an accused, it is not permissible in law for the case to proceed only against its employees. Secondly, in the complaint there is no specific averment that the present two petitioners, who are described as Unit head and Manager, C.S.R. respectively were in-charge of and responsible to the company for conduct of its business. The mandatory requirement of Section 149 of the Electricity Act, 2003 is, therefore, not satisfied in the present case.

7. The legal position in this regard is well settled. Reference may be made to the decisions in ***Aneeta Hada v. Godfather Travels and Tours Pvt. Ltd. (2012) 5 SCC 661*** and the subsequent judgment in ***Sharat Kumar Sanghi v. Sangita Rane (2015) 12 SCC 781*** where it was held as under:

"11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the company, but the company has not been made arrayed as a party. Therefore, the allegations have to be restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is

> fastened on certain statutes. It has been so held by a three-Judge Bench in ***Aneeta Hada v. Godfather Travels and Tours Private Limited*** in the context of Negotiable Instruments Act, 1881."

8. For the aforementioned reasons, the Court quashes the proceedings in G.R. Case No.220 of 2015 pending in the Court of S.D.J.M., Keonjhar and all the orders and proceedings consequent thereto are hereby quashed.

9. The petition is allowed in the above terms. But, in the circumstances, with no order as to costs. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

S.K. Jena/Secy.