

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17915 of 2020

Arising Out of PS. Case No.-50 Year-2009 Thana- KADAMKUAN District- Patna

Rajesh Kumar Kochgaway, Son Of Late Shashi Bhushan Kochgaway,
Resident Of Mohalla - Rajendra Nagar, Road No. 2, Police Station -
Kadamkuan, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Bihar State Electricity Board (Now SBPDCL) through its Secretary,
Vidyut Bhawan, Bailey Road, Patna, Bihar.
3. The Electrical Executive Engineer, Electric Supply Sub-Division, Rajendra
Nagar, Patna. Bihar
4. The Assistant Electrical Engineer, Electric Supply Sub- Division, Rajendra
Nagar, Patna. Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajoy Kumar Chakraborty- Advocate
For the State	:	Mr. Pranav Kumar- A.P.P.
For the S.B.P.D.C.L.	:	Mr. Vinay Kirti Singh- Sr. Advocate
		Mr. Vijay Kumar Verma- Advocate
		Mr. Akhileshwar Singh- Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

11-09-2023

1. Heard learned counsel for the petitioner,

learned senior counsel for the South Bihar Power Distribution
Company Limited (S.B.P.D.C.L.) and learned APP for the
State.

2. The learned counsel for the petitioner

submits that the present quashing application has been filed
seeking quashing of the order dated 17.01.2020 passed by
the learned Special Judge, PESU, area Patna in G.R. No.466



of 2009 arising out of Kadamkuan P. S. Case No.50 of 2009 whereby the application filed under Section 239 of the Cr.P.C. seeking discharge has been rejected in a mechanical manner.

3. The learned senior counsel appearing for the Company, at the out, submits that the learned Special Judge, PESU area Patna has been invested with powers of Sessions Judge, as such, the discharge application ought to have been filed under Section 227 of the Cr.P.C. and not under Section 239 of the Cr.P.C.

4. The learned counsel for the petitioner does not rebut the submission of the learned senior counsel appearing for the power Company, but submits that mere technicalities should not come in the way of substantial justice.

5. The learned counsel for the petitioner next submits that in order to appreciate the controversy in question, it is necessary to delineate the facts of the case in brief. The learned counsel submits that petitioner runs Sri Om Scan Centre and had entered into an agreement with the



Power Company for electricity connection. Accordingly, the agreement was executed by letter dated 29.06.2000 for running the Scan Centre and the petitioner was allotted Consumer Account No.227310, thereafter, a commercial Meter No.804/31/3x10-60A with sanctioned load of 30 K.W.

6. The learned counsel next submits that an inspection of the premises were done on 10.02.2009 by an inspection team to verify the load and inspection of meter. During inspection, the meter expert calculated the load and found it to the extent of 26.268 K.W. out of sanctioned load of 30 K.W. and accordingly, a report dated 10.02.2009 was prepared alleging tampering of meter. Thereafter, the meter was removed and the line was disconnected and an F.I.R. being Kadamkuan P. S. Case No.50 of 2009 came to be instituted under Section 135 of the Electricity Act.

7. The learned counsel submits that the act of the inspecting team was accentuated with malafide, as would be evident from the submissions hereinafter. In the same breath, the learned counsel also submits that genuine customers are harassed and the authorities, who indulged in



harassment goes Scot-free in garb of discharging official duty and then, the learned trial Court also acts mechanically while considering the application for discharge. Thus, submits that in the event, if the present application is allowed, the authorities, who indulged in an illegal act by instituting an F.I.R. against the petitioner by violating the provisions of the Bihar Supply Code, 2007, be also dealt sternly.

8. It is next submitted that an agreement between the petitioner and Bihar State Electricity Board (hereinafter referred as the B.S.E.B./ Power Company) was entered on 29.06.2000 and accordingly, Consumer Account No.227310 was allotted to the petitioner and thereafter, a commercial meter No.804/31/3x10-60A was installed with sanctioned load of 30 K.W. for running a Scan Unit in the name and style of Sri Om Scan Centre.

9. It is further submitted that from the date of installation of the meter, the petitioner was paying the electricity bill without any complaints from any quarter.

10. It is next submitted that on 21.10.2008



(Annexure-1 to the quashing application) and Inspection Team (STF), Rajendra Nagar, inspected the premises of the petitioner for load verification and for inspecting the meter. The meter was checked and the team did not find any sign of bypassing of line nor there was any sign of tampering with the meter. However, the Inspecting Team reported that the meter appears to be giving slow reading thus be checked by M.R.T. to be replaced by secure meter. The team also suggested its replacement due to manufacturing defects in the meter and found little difference in input and output current. The team also checked the total load and appliances and found total load to the extent of 28.776 K.W. out of sanctioned load of 30 K.W.. The report also suggested that there was no tampering with the meter nor consumption of energy was found beyond the approved sanction.

11. It is further submitted that petitioner in view of the report dated 21.10.2008 regarding defect in meter for giving slow reading requested for test replacement of meter as provided under Clause 8.13 of the Bihar Supply Code, 2007 (hereinafter as the Code), but the request was



ignored on the ground that meter shall be replaced. The petitioner, thus, on 14.11.2008 (Annexure-2 to the quashing application) wrote a letter for replacing the meter as provided under Clause 8.14 of the Code, but nothing was done. Thereafter, petitioner sent a reminder on 06.02.2009 (Annexure-2/1 to the quashing application) to get the meter tested and replaced.

12. The learned counsel next submits that the authorities on the one hand were aware since 21.10.2008 with regard to the defect in the meter and despite request of the petitioner to change the meter, no action was taken and all of a sudden, on 10.02.2009 in absence of the petitioner, his premises was raided and an F.I.R. came to be instituted as recorded herein above, which amply demonstrates that the F.I.R. was instituted with an ulterior reason. This submission has been made because of the intervention of this Court, the meter was sent for testing to Bangalore and after the test, the petitioner was vindicated of the charges.

13. The learned counsel next submits that after the F.I.R. was instituted, the line was disconnected and



the Assistant Electrical Engineer issued notice to the petitioner under Clause 11.2.3(b) of the Code by letter dated 11.02.2009 (Annexure-5 to the quashing application) directing the petitioner to deposit an interim amount of Rs.10.53 Lacs within seven days. Further, the petitioner was called in his chamber for hearing where he was threatened with arrest or had to accept the liability of Rs.10.53 Lacs in writing to be paid in 25 instalments.

14. The petitioner filed an appeal against the provisional bill before the Assistant Electrical Engineer (A.E.E.) on 20.02.2009, but without considering the appeal, the A.E.E. issued final assessment bill by letter dated 27.02.2009 (Annexure-6 to the quashing application) for Rs.10.53 Lacs and directed to pay the amount within seven days in breach of the provisions of the Code. The petitioner filed his objection dated 16.03.2009 (Annexure-7 to the quashing application) before the Assistant Electrical Engineer/cum-Assessing Officer, against final assessment order dated 27.02.2009.

15. The learned counsel next submits that



thereafter, petitioner deposited an amount of Rs. One Lac as first instalment in compliance of the order of the learned District Judge, Patna and requested the authorities by his letter dated 27.02.2009 (Annexure-8 to the quashing application) to restore the electricity connection and also assure that the payment shall be made in 15 instalments without prejudice, but electricity connection was not restored. Thereafter, the petitioner by his letter dated 03.03.2009 (Annexure-9 to the quashing application) requested the Chairman of the Board for restoration of electricity connection, but then also, no action was taken.

16. Thereafter, petitioner filed C.W.J.C. No.3162 of 2009 and the same was disposed of by an order dated 17.03.2009 (Annexure-10 to the quashing application) with a direction to the petitioner to file appeal before the Appellate Authority within the statutory period of 30 days with a direction that the Appellate Authority would re-structure the amount of instalment after deducting the amount already paid. Further, petitioner was also directed not to stop the payment of instalment as fixed by the



learned District Judge, Patna.

17. The petitioner accordingly, filed an appeal on 30.03.2009, but since the Appellate Authority was not appointed as such, his grievance was not redressed. Accordingly, the petitioner was compelled to file CWJC No.3392 of 2010 before this Court and the same was disposed of by an order dated 19.04.2010 (Annexure-11 to the quashing application) with a direction to file appeal before the Executive Engineer-cum-Electric Inspector, Energy Department, Government of Bihar with a direction to decide the appeal on merit within 30 days.

18. The petitioner in compliance of the order dated 19.04.2010 in CWJC No.3392 of 2010 filed Appeal Case No.15 of 2010 on 26.04.2010 before the Executive Engineer-cum-Electric Inspector, Energy Department, Govt. of Bihar.

19. The appeal was decided by an order dated 29.12.2010 (Annexure-12 to the quashing application) and the Appellate Authority after hearing the parties came to a considered conclusion that there was no sign of theft of



electricity. No bypassing electric line nor any tampering with the meter was established/ proved. It was also observed that the Board failed to follow the provisions under Clause 8.13 of the Code and also directed to refund 50% of the amount paid by the petitioner to the Board and difference of giving slow reading in the meter be assessed and adjusted if any difference was found and the same be adjusted from the remaining 50% of the amount of the bill realized from the petitioner.

20. The petitioner thereafter represented with the order of the Appellate Authority by his representation dated 04.08.2011 and 18.07.2011 (Annexure-13 series of the quashing application) before the A.E.E. and the Chairman of the Board respectively, but no action was taken for nearly eight months, rather the authority by letter dated 29.08.2011 (Annexure-14 to the quashing application) sought consent of the petitioner to get the meter tested by a laboratory.

21. Since the order of the appellate authority was not complied, as such, the petitioner filed CWJC



No.18381 of 2011, the same was disposed of by an order dated 06.08.2015 with a direction to the Board for take steps for getting the meter checked by an expert team of meter testing laboratory and the bill would be calculated as per the report of the meter testing and the amount against the punitive bill would be adjusted and refunded to the petitioner. Further, if the Board does not comply with the direction within three months, the order of the Appellate Authority shall be become final.

22. The learned counsel submits that in terms of the order dated 06.08.2015 in CWJC No.18381 of 2011, the meter was sent to M/s C.P.R.I., Bangalore on 29.10.2015 for testing and the Lab after testing the meter on the same day, did not find any sign of tampering or bypassing inside the meter in question by its report dated 29.10.2015 (Annexure-16 to the quashing application). Thereafter, the opposite parties herein on representation of the petitioner dated 15.06.2016 (Annexure-17 to the quashing application) adjusted Rs.1046610/- and kept Rs. Six thousand and odd towards miscellaneous expenses and



the issue was resolved as would evident from letter dated 29.04.2017 (Annexure-18 to the quashing application) issued by the Executive Engineer, PESU Rajendra Nagar. The learned counsel submits that Rs.1046610/- was returned to the petitioner as authority after meter testing came to a considered conclusion that it was not a case of theft.

23. The learned counsel next submits that the ordeal of the petitioner came to an end after the meter was tested by the laboratory at Bangalore whereafter the authorities also refunded/ adjusted the amount which he had paid realizing that it was not a case of theft. Accordingly, the petitioner filed an application under Section 239 Cr.P.C. before the Court of Special Judge, PESU, Patna (Annexure-19 to the quashing application) along with a supplementary affidavit bringing on record the facts of the case as recorded herein above for discharging him, but the same came to be rejected by a mechanical order dated 17.01.2020.

24. The learned counsel next submits that from perusal of the order passed by the learned Trial Court,



it would manifest that the same is completely mechanical without due application of mind. It is next submitted that the order is cryptic and does not assign any reason for rejecting the application seeking discharge of the petitioner.

25. The learned counsel next submits that while exercising power under Sections 227 or 239 of the Cr.P.C., the Court does not have to act in a mechanical manner i.e. the Court cannot act like a Post Office and give an impression that the Court is only meant for rejecting all applications relating to discharge.

26. The learned counsel next relying on a judgment of the Hon'ble Supreme Court in the case of ***State of Tamil Nadu Versus R. Soundirarasu and others (2023) 6 SCC 768*** submits that there are three provisions in the Cr.P.C. which deals with question of framing of charge or discharge:- Sessions Trial- Section 227 and Section 228 Cr.P.C, warrant Trials- Section 239 and Section 240 Cr.P.C, summon Trial, Section 245(1) and Section 245 (2) Cr.P.C.

27. The learned counsel submits that Cr.P.C. thus contemplates discharge of accused by the Court of



Session under Section 227 Cr.P.C in a case triable by it, further discharge of an accused in cases instituted upon a police report are covered by Section 239 Cr.P.C. and discharge of accused in cases instituted otherwise than on a police report are covered under Section 245 Cr.P.C.

28. It is next submitted that as per Section 227 Cr.P.C., the Trial Judge is required to discharge the accused, if- the judge considers that there is not sufficient ground for proceeding against the accused persons.

29. The obligation to discharge the accused under Section 239 Cr.P.C. arises when, the Magistrate considers the charge against the accused to be groundless and the power to discharge under Section 245(1) Cr.P.C. is exercisable, when the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which if unrebutted would warrant his conviction.

30. It is next submitted that Section 227 Cr.P.C. and Section 239 Cr.P.C. respectively provide for discharge being made before recording of evidence and the consideration as to whether the charge has to be framed or



not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents send along with it and examination of the accused and after affording an opportunity to the parties to be heard. On the other hand, the stage for discharge under Section 245 is reached only after the evidence referred to in Section 244 Cr.P.C has been taken.

31. It is next submitted that the Hon'ble Supreme Court further observed that despite slight variation in the provisions with regard to discharge under the three pair of Sections referred to above, the settled legal position is that the stage of framing of charge under either of these three situations, is a preliminary one and the test of prima facie case has to be applied, if the trial court is satisfied that a prima facie case is made out, charge has to be framed.

32. The learned counsel next relying on the aforesaid judgment of the Hon'ble Supreme Court submits that the nature of evaluation to be made by the Court at the stage of framing of charge came up for consideration before



the Hon'ble Supreme Court in the case of ***Omkar Nath Mishra vs. State (NCT of Delhi) (2008) 2 SCC 561*** and referring to its earlier decision in ***State of Maharashtra vs. Som Nath Thapa (1996) 4 SCC 659***, the Hon'ble Supreme Court held- that the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and it is not expected to go into the probative value of the material on record. Further, the Hon'ble Supreme Court relying on the decision in the case of ***State of Madhya Pradesh vs. Mohan Lal Soni (2000) 6 SCC 338*** held that- The crystallized judicial view is that at the stage of framing of charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. Similar view was taken in the case of ***Sheoraj Singh Ahlawat Vs. State of U.P. (2013) 11 SCC 476***.

33. The learned counsel thus submits that the



Hon'ble Supreme Court in the case of ***State of Tamil Nadu Versus R. Soundirarasu and others*** very clearly delineated the contours of discharge as enshrined in the Cr.P.C.

34. The learned counsel thereafter relies on another judgment of the Hon'ble Supreme Court in the case of ***Kanchan Kumar Vs. State of Bihar (2022) 9 SCC 577*** and submits that in the said case, the complainant had alleged against the appellant (Kanchan Kumar) that while he was posted with B.S.F.C. in the capacity of A.G.M. had purchased three houses and two pieces of land, which were disproportionate to the known sources of his income. The complaint was inquired and after detailed investigation, the allegations were found false, except for a residential house in Patna, which the appellant had purchased on 29.08.1988 for Rs.2,26,500/- with the help of loan from B.S.F.C., no other asset could be traced to the ownership of the appellant. However, despite finding no merit in the allegation, the investigation was kept pending. The appellant, thereafter, in 1996 joined O.N.G.C. as D.G.M., keeping his



lien with B.S.F.C. on 21.02.2000, an FIR came to be instituted under Section 13(1)(d) and 13(2) of the P.C. Act, 1988, on the same allegation that he possessed asset disproportionate to his known sources of income, thereafter a charge sheet came to be filed on 11.09.2007, which recorded that he earned total income of Rs.3,01,561/- and incurred an expenditure of Rs.5,24,386/- during the check period. Thus, had amassed Rs.2,22,825/- disproportionate to his known sources of income.

35. The learned counsel submits that the appellant had filed a discharge application which was rejected by the learned Sessions Judge and thereafter, he moved before this Court seeking quashing of the order by which discharge application was rejected. The quashing application of the appellant before this Court also came to be rejected against which the petitioner had moved before the Hon'ble Supreme Court and the Hon'ble Supreme Court while setting aside the order of the learned Sessions Judge and the High Court allowed the appeal by relying on several precedents of the Hon'ble Supreme Court and one of them



being ***Dipakbhai Jagdishchandra Patel Vs. State of Gujarat, (2019) 16 SCC 547*** wherein the Hon'ble Supreme Court held:-

At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere Post office. The Court must indeed sift the materials before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be



translated into evidence at the stage of trial.

The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that there is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

36. The learned counsel next submits that the learned Special Judge, Vigilance dismissed the discharge application of **Kanchan Kumar** on the ground that a roving inquiry is not permitted at the stage of discharge. The said order of the learned Special Judge, Vigilance was affirmed by the High Court. It is next submitted that the Hon'ble Supreme Court while setting aside the order of the High Court and of the learned Special Judge, Vigilance, Patna on the ground that what was required was not a roving inquiry but a simple and necessary inquiry for proper adjudication of an application for discharge.

37. The learned counsel next submits that the



Hon'ble Supreme Court allowed the application of **Kanchan Kumar** on the ground that the amount alleged to be disproportionate as per the allegation in reality was not disproportionate which could be culled out from the investigation of the Vigilance itself. Thus, it is submitted that the Hon'ble Supreme Court recorded that a roving inquiry is not required but what was required was a simple inquiry for proper adjudication.

38. The learned counsel relying on the aforesaid two judgments of the Hon'ble Supreme Court thus submits that from facts recorded herein above, it becomes clear that the petitioner ultimately had to approach this Court in its writ jurisdiction thrice and it was only at the intervention of this Court that the meter was sent for testing to Bangalore and where the laboratory after testing the meter came to a considered conclusion that it was not a case of theft based on which the B.S.E.B./ Company adjusted the amount which the petitioner had paid by way of punitive bill raised by the A.E.E. and thereafter he filed an application seeking discharge on materials which were unrebuttable, but



still the learned trial court in a mechanical manner proceeded and dismissed the discharge application.

39. The learned Senior counsel appearing for the Company does not rebut the factual submissions made by the learned counsel for the petitioner as recorded herein above.

40. In view of the facts and law as recorded herein above, the order dated the order dated 17.01.2020 passed by the learned Special Judge, PESU, Area Patna in G.R. No.466 of 2009 arising out of Kadamkuan P. S. Case No.50 of 2009 is hereby quashed.

(Satyavrat Verma, J)

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AFR/NAFR	A.F.R.
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