

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1223 of 2013

**West Bengal State Electricity Distribution Company Limited
Vs
State of West Bengal**

For the Petitioner : Mr. Aniket Mitra

For the State : Mr. Sandip Chakraborty

Heard on : 03.02.2023

Judgment on : 18.07.2023

Ananya Bandyopadhyay, J.:-

1. The instant criminal revisional application has been filed by the petitioner to set aside the impugned judgment and order dated 31.08.2012 passed by the Learned Additional District & Sessions Judge, Special Court (Elec.) Arambagh, Hooghly in connection with Elec. Case No. 118/12 arising out of Arambagh Police Station Case No. 333/12 dated 14.05.2012 under Section 135(1)(a) of the Electricity Act, 2003.
2. The complaint was lodged on behalf of West Bengal State Electric Board, (hereinafter to be mentioned as WBSEB), dated 14.5.2012 inter alia stating that the Station Manager, Arambagh, Customer Care Center of WBSEDCL

along with two of his staff entered into the premises of Smt. Durga Mallick on 14.05.2012 at about 3 P.M. On inspection the said congression theft of electricity by service cable tapping from service line from the meter illegally amounting to commission of theft of electricity under Section 135(i)(a) of the Electricity Act, as amended on 2007 was detected.

3. Subsequent to theft of electricity the service cable was disconnected and removed from service line. The seizure list was prepared and an inspection list was compiled. The raiding party left the premises at about 4.15 P.M. Accordingly, a complaint was lodged as the accused caused a lose of revenue at the tune of Rs.90,000/- at the cost of WBSEDCL.
4. The Learned Advocate for the petitioner submitted that the Learned Trial Court had directed to return a sum of Rs.70,231/-, which was recovered from one Durga Mallick of Doulatpur, Ward No. 6, Arambagh in connection with the case therein Arambagh P.S. Case No. 333 dated 14.05.2012 under Section 135 (i)(a) of the Indian Electricity Act, 2003.
5. During pendency of the case/investigation, by issuing a cheque along with interest at the rate of nine per cent from the date of order to the order of actual payment. He argued that the aforesaid judgment and order was passed without application of judicial mind on the basis of acceptance of FRT submitted through perfunctory investigation whereby the opposite party no. 2 had been discharged from all liabilities.
6. A naraji petition against the acceptance of such FRT was filed which was not moved by the Public Procecutor to seek adjournment on behalf of the

petitioner and the Learned Trial Court without hearing the petitioner accepted the FRT.

7. It was further submitted by the Learned Advocate for the petitioner that at the time of raid, the opposite party no. 2 claimed herself as Durga Mallick which can be applicable to both male and female and, therefore, the petitioner believed the opposite party to be a female. The Learned Trial Judge while accepting the FRT failed to exercise the discretion under Section 190 of the Criminal Procedure Code. The discharge of the opposite party no. 2 against whom theft of electricity was lodged, involved loss of public money and the Trial Court committed serious error in presuming innocence of the opposite party no. 2 and discharging the same and setting aside the impugned judgment and order.
8. The Learned Advocate for the State referring to statements recorded under Section 161 of the Criminal Procedure Code stated that the complainant officer along with his associates entered into the premises of "Smt. Durga Mallick" in connection with theft of electricity as mentioned therein. Even the FRT mentioned house of Smt. Durga Mallick, Wife of Subhas Mallick. However, surprisingly a sum of Rs.70,231/- was recovered from Durga Mallick, a male and under such circumstances the impugned judgment and order was passed appropriately and should not be interfered with.
9. The inspection report filed by the Station Manager inter alia stated as follows:

“1. Name of the Consumer/User : Durga Malik w/o Sri Subhas Malik
2. Address of the Premises : Doulatpur (Shibtala), Ward No. 15
Arambagh, Hooghly
3. Service Connection No. : 9115/D
4. Consumer No. : H15224
5. Date of Inspection : 14.05.12 at 3.45 P.M.
6. Category of Consumer (Dom./Com./Ind./Others): Domestic
7. Connection Load (In KW) :
8. Connected Load at the time of Inspection (In KW) : 3.5 KW
9. Energy Meter Detail : a) Make : Genus b) Serial No. I121543
c) Status : Sticky/Burnt/No Display/Running ✓/ No Meter
10. Seal Details : a) Pilfer Proof Box: NA b) Meter Body: NA
c) Meter Terminal Cover: OK
11. Details of abnormality if any : Service cable tapped before meter entering.”

10. The token seizure list filed by the aforesaid officer of the petitioner company stated as follows:

“1. Name of the Consumer/User : Durga Malik w/o Sri Subhas Malik
2. Address of the Premises : Doulatpur (Shibtala), Ward No. 15
Arambagh, Hooghly
3. Service Connection No. : 9115/D
4. Consumer No. : H15224
5. Date of Inspection : 14.05.12 at 3.45 P.M.
6. Category of Consumer (Dom./Com./Ind./Others): Domestic
7. Article Seized : a) Service Cable PVC 2 Core with
b) tapped portion – 25 fts(approx)
c) Wooden Board – 1 No. with switch fitting.”

11. The statements recorded under Section 161 Cr.P.C. named the consumer to be Smt. Durga Mallick, wife of Subhas Mallick to have committed theft as stated above. The FRT being 358/12 dated 29.05.12 stated the name of the consumer as Smt. Durga Mallick, wife of Subhas Mallick to have committed the theft and the FIR was instituted against Smt. Durga Mallick who under such circumstances is a female.

12. The petitioner could not state a plausible reason to controvert the fact of recovering a sum of Rs.70,213/- from Durga Malik, son of Sagar Malik of Daulatpur, Arambagh Ward No. 6, Arambagh, Hooghly who was compelled to pay a sum of Rs. 70,231 vide money receipt no.100081600945 dated 17.05.2012 in reference to the present case bearing Arambagh P.S. Case No. 333 dated 14.05.2012.

13. The First Information Report i.e. FIR No. 333/12 dated 14.5.12 stated the particulars as above:

“Complainant/Informant:

Name: Sekhar Chandra De

Father's/Husband's Name

Date/Year of Birth (d) Nationality.....

Passport No..... Date of Issue..... Place of Issue.....

Occupation.....

Address: Stn Manager, Arambagh, CCL, WBSEDCL.

Details of known/suspected/unknown accused with full particulars

(attach separate sheet, if necessary):

(1) Smt. Durga Mallick w/o Sri Subhas Mallick of Daulatpur, Ward No. 6 PS: Arambagh, Hooghly.

Reasons for delay in reporting by the complainant/Informant

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Particulars of properties stolen/involved (Attach separate sheet, if necessary) :

(1) Service Cable PVC 2 Core with tapped portion 25 fts (approx)

(2) Wooden Board – 1 No. with Switch

... value of properties stolen/involved.....

... Report/U.D. Case NO., if any.....

... Contents (Attach separate sheets, if required) : The original written complaint

of the complainant which is

treated as FIR is attached herewith.”

14. The process initiated for theft of electricity through a formal FIR being instituted against a particular person culminating in a FRT against the same and implicating another person of different gender and address respectively being compelled to pay a sum of Rs.70,231/- was unlawful and confounding. Such action on the part of the petitioner company was harassive and coercive to the detriment of the person who was compelled to make such payment without any proof of commission of offence on record.

15. Under Such circumstances, criminal revisional application is dismissed.
16. The petitioner company is to return back Rs.70,231/- as directed by the Learned Additional District & Sessions Judge, Special Court (Elec.) Arambagh, within a period of four weeks and the respondent State is to take necessary steps in case of non-compliance of this Court's order.
17. Accordingly, the instant criminal revisional application is disposed of. Connected application if any is also disposed of accordingly.
18. There is no order as to cost.
19. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
20. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)