

Sl No. 51
28.02.2023.
SB-II
AGM

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 339 of 2023

**Sri Umesh Lama
-versus
West Bengal State Electricity Distribution
Company Limited (WBSEDCL) & Ors.**

Mr. Amales Roy,
Mr. Deborshi Dhar,
... For the petitioner.
Mr. Sudipta KantaBhowmick,
Mr. Anirban Banerjee,
Ms. Dipti Bhowmik,
... for the WBSEDCL.
Mr. Subir Kumar Saha, AGP
Ms. Bedarshruti Bose,
... For the State.
Mr. Milindo Paul,
Mr. Nabankur Paul,
... For the respondent no. 10.

Affidavit-of-service filed today in Court be retained with the records.

The petitioner prays for quashing of the criminal proceeding being Bhaktinagar Police Station Case No. 836 of 2022 dated 04.08.2022 and the Bhaktinagar Police Station Case No. 31 of 2023 dated 13.01.2023 both initiated under Section 136 (1) (a) of the Electricity Act, 2003.

The brief fact of the case as narrated by the petitioner is that the electric meter of the petitioner has been stolen on repeated occasions. First it was stolen in July 2022 after which a new meter was installed at the premises of the petitioner. Within a few months of the installation of the new meter, the same was again stolen in January 2023.

The petitioner lodged complaint on both occasions. The police, for reasons best known to them, implicated

the petitioner in the criminal proceeding and named him in the First Information Report. The petitioner is aggrieved by the same.

It has been submitted that had the petitioner any mala fide intention, he would not have reported the incident of theft before the police station. The petitioner being a law abiding citizen of the country reported the matter of theft before the police the moment the same came to his knowledge.

On the contrary the representatives of the West Bengal State Electricity Distribution Company Limited reported the matter before the police a month after the first theft took place.

It has been submitted that the petitioner does not have any *mens rea* in connection with the theft. There is no allegation of pilferage against the petitioner. There is no amount due and pending from the petitioner on account of electricity charges.

Reliance has been placed on the decision passed by the Hon'ble Supreme Court in the matter of *State of Haryana -vs- Bhajan Lal reported in 1992 Supp (1) SCC 335* paragraph 102.

It has been submitted that the allegation in the First Information Report does not prove that the complaint against the petitioner can reach to a just conclusion and that there is sufficient ground for proceeding against him.

Prayer has been made for quashing the criminal proceeding initiated against the petitioner.

Learned advocate representing the Distribution Company Limited submits that for strange reason the meter gets stolen just prior to the billing period. The representatives of the Distribution Company Limited reported the matter before the police and investigation is in progress.

Learned advocate representing the State respondents received instruction from the Commissioner of Police, Siliguri Police Commissionerate wherefrom it appears that the first First Information Report has resulted in a charge sheet against the petitioner being Bhaktinagr PS Charge Sheet No. 12 of 2023 dated 25.01.2023. The second First Information Report is still in the investigation stage.

Learned advocate representing the private respondents submits that the petitioner has deliberately and intentionally implicated the private respondents in the present proceeding. The private respondent is no way connected with the theft and his name is not appearing in any of the criminal proceeding that is continuing at present.

From the submissions made on behalf of both the parties and upon perusal of the documents placed before this Court it appears that the police has already filed a charge sheet against the petitioner with regard to the first theft that occurred, and the second theft is still under investigation.

Though the petitioner submits that there is no *mens rea* on his part for committing the theft, but nevertheless, at this stage, since charge sheet has been filed against the petitioner, it may not be proper to quash the FIR.

It will be open for the petitioner to raise all the issues in an appropriate proceeding that may be initiated by him.

In view of the above, no relief can be granted to the petitioner in the instant proceeding.

The writ petition stands dismissed.

Instructions given by the Commissioner of Police, Siliguri Police Commissionerate signed by on 06.02.2023 be retained with the records.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)