IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36665 of 2016

Arising Out of PS. Case No.-49 Year-2012 Thana- RAGHOPUR District- Supaul

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Sajida Khatoon, Wife of Late Razi Ahmed, Resident of Saharsa Basti, Police Saharsa, District- Saharsa.

... ... Petitioner/s

Versus

1. State of Bihar
2. Bihar State Electricity Board, through, the Chairman, Bihar State Electricity Board, Patna, Bihar.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Satish Kumar Singh, Adv.
For the State	:	Mr. Ram Sevak Choudhary, APP
For the O.P. No. 2	:	Mrs. Namrata Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL ORDER

13 12-12-2024 Mr. Satish Singh, learned counsel for the petitioner, Mr. Ram Sevak Choudhary, learned APP for the State and Mrs. Namrata Mishra, learned counsel for the O.P. No. 2 are present and they are heard.

2. The instant criminal miscellaneous petition has been filed under section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') with a prayer to quash the order dated 13.04.2016 passed in G.R. No. 244/2012 corresponding to Raghopur P.S. Case No. 49/2012 by which the cognizance of the offences under sections 406 and 409 of the Indian Penal Code (in short 'IPC') has been taken against the petitioner.

3. The instant matter relates to the allegation of misappropriation of Rs. 1,49,302/- by the petitioner and as per the prosecution story, the petitioner was secretary of a Non-Government Organization, namely, Human Advancement Society (hereinafter referred as 'Society') and the same was selected as a franchisee for the purpose of distributing the electricity bills among the consumers and for collecting the bills' amount from the consumers and thereafter, depositing the same to the Electricity Department and the alleged misappropriated amount belongs to the consumers of Electricity Department which was collected by the petitioner but the same was not deposited to the Electricity Department. The main grounds taken by the petitioner's counsel to assail the order impugned are that the petitioner was secretary of the Society and her husband was also a member of the Society, who used to distribute the bills and collect the revenue on behalf of the Society and her husband was brutally murdered and an amount of Rs. 1.5 lakh approx, collected by him from the consumers in connection with the Electricity bills, was looted from him and for that incident Raghopur P.S. Case No. 88/2008 was registered under sections 302 and 120B read with section 34 of IPC and after that incident, work of the Society stopped and thereafter, the petitioner filed several applications before the authorities to exonerate her from the liabilities of the alleged misappropriated amount of Rs. 1,49,302/-. As per petitioner's counsel, the petitioner's franchisee started working since December 2006 and continued the same till August 2008 and as per the terms of agreement executed between the Society of the petitioner and the Bihar State Electricity Board (hereinafter referred as 'Electricity Board') (Annexure-'5'), the Electricity Board was bound to give commission to the Society against the collected revenue and admittedly, a sum of Rs. 1,49,304/- was dues against the Electricity Board as commission amount of the Society till April 2007. Though for the period from May 2007 to October 2007, some part of commission amount was paid by the Electricity Board, however, Rs. 2,11,000/- is still due with the Elecricity Board for the said period and in respect of the period from November 2007 to August 2008, the commission of the collected revenue amounting to Rs. 2,44,000/- is also still unpaid, accordingly, a total amount of commission of the Society comes to Rs. 6,04,304/- and in the counter affidavit, the O.P. No. 2 has not specifically denied the factum of the dues of the said amount being on the part of the Electricity Department and further, as per the terms and conditions of the agreement, of which copy has been filed as Annexure-5, if the petitioner's franchisee failed to deposit the amount collected from the consumers by the 5th of the following month then it would be charged with simple interest @ 2 % per month for the delay period and in case the franchisee failed to deposit the amount collected from the consumers within the stipulated period for three consecutive months or did not achieve the minimum collection target of 35% for three consecutive months then the agreement could be terminated with forfeiture of security deposit after serving a fifteen days notice. It is an admitted position that at the time of lodging the FIR, a bank guarantee of rupees four lakhs was available with the Electricity Board as surety and the same continued till the year 2008, so, the Electricity Board had two options, first, the commission amount which was due on its part could be adjusted against the alleged amount or the bank guarantee which had been submitted by the petitioner's Society could have been forfeited against the alleged amount but none of them was availed by the Electricity Board.

4. Though the learned counsel appearing for the Electricity Board has opposed this petition but fairly accepted that the payment of commission to the petitioner's Society was dues on the part of the Electricity Board till the year 2008, and also, accepted the deposition of the bank guarantee by the petitioner's Society.

5. In view of the aforesaid grounds taken by the petitioner, this Court peruses the relevant materials and finds that though the alleged amount of Rs. 1,49,302/- could not have been deposited by the petitioner's Society but in this regard, the petitioner has taken the pleas that her husband, who was a member of the Society, was engaged in collection of the revenue from consumers concerned to the electricity bill amount, was murdered and a sum of Rs. 1.5 lakh approx relating to the collected revenue was looted from him, for which Raghopur P.S. Case No. 88/2008 was registered and the said fact has not been refuted by the learned APP appearing for the State as well as learned counsel appearing for the O.P. No. 2. During the course of argument, learned counsel appearing for the Electricity Board fairly accepts the dues of more than two lakhs rupees being on the part of the Electricity Board during the relevant period and the same was to be paid to the petitioner's Society in respect of the commission amount as per the terms of the agreement. As per the agreement which was executed in between the petitioner's Society and the Electricity Board, there was specific remedy for the Electricity Board to forfeit the security amount (bank guarantee) and realize the undeposited amount collected by the petitioner, with interest and the said term of the agreement has not been denied by the learned counsel appearing for the Electricity Board and the petitioner has also filed the copy of the agreement and further, the availability of the security money (bank guarantee) which had been deposited by the Society in the Electricity Board as a security during the relevant period in which the alleged collected amount was not deposited, has not been denied by the learned counsel appearing for the Electricity Board, so, in view of all these circumstances, this Court is of the view that the alleged wrong mainly attracts a civil liability on the part of the petitioner and subjecting the petitioner to trial for the alleged offences in respect of the alleged wrong will be the abuse of process of court and furthermore the main ingredients of the alleged offences do not attract in this matter, so, the order impugned taking cognizance of the alleged offences is hereby set aside and the present petition stands allowed.

(Shailendra Singh, J)

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