

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

PRESENT:

**THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE**

**CRR 1590 of 2015**  
**CESC Limited**  
**Vs.**  
**The State of West Bengal & Anr.**

For the Petitioner : Mr. Kaushik Gupta  
Mr. Anirban Tarafdar  
Mr. Daniel Sarkar

For the State : Mr. Debasish Roy  
Mr. Anand Keshari

Heard on : 27.09.2024

Judgement on : 07.10.2024

**Ajoy Kumar Mukherjee, J.**

1. This Application has been preferred challenging order dated 30<sup>th</sup> January, 2015 passed by learned Additional Sessions Judge, Alipore, in complaint case no. C/21/07. Petitioner's case is that petitioner initially lodged Tangara Police station Case no. 273 dated 8<sup>th</sup> December 2004, under sections 135/138 of the Electricity Act, 2003 (in short Act of 2003) for theft of electricity, allegedly committed by the opposite party no.2 herein and his partner by tampering with the original meter body seals and by illegal

reconnection and hooking. Thereafter charge sheet was submitted under section 135/138 of the Act of 2003 and the learned special court was pleased to take cognizance of the offence.

**2.** However, on 8<sup>th</sup> May, 2007, in view of this High Courts judgment dated 7<sup>th</sup> June, 2006 passed in CRR 161 of 2007 which held that taking cognizance in such case, upon police report is barred under section 151 of the Act of 2003, the learned Additional Sessions judge special court Alipore was pleased to discharge the accused but liberty was given to the CESC limited /petitioner/ complainant to initiate complaint case in accordance with law.

**3.** Accordingly the petitioner instituted the complaint case being case no. C/21/2007 for offences punishable under section 135/138 of the Act of 2003 against the opposite party no.2 over the same set of allegations. It is submitted that thereafter section 151 of the said Act of 2003 was amended w.e.f. 15.06.2007 and new sections namely 151A and 151B was also incorporated. In view of amendment of section 151, the petitioner filed a petition before the court below for restoration of the police case and also for dropping of the complaint case. However, by the impugned order dated 30<sup>th</sup> January, 2015 learned court below rejected the said prayer though, liberty was given to approach before the higher forum for further clarification.

**4.** Petitioner/complainant by filing the present application contended that the order impugned is bad in law as well as in fact as the judge himself was in doubt about the actual position of law and as such instead of rejecting the petitioner's petition hurriedly, he ought to have either decided the issue at length or referred the matter to the High Court for a decision.

Citing a judgment passed by this court in **Ajoy Ghosh Vs. State and another, 2008(1) CHN 148 (Cal)** and also referring the case of **Vishal Agarwala Vs. Chattisgarh State Electricity Board** reported in **(2014) 3 SCC 696** and **Assistant Electrical engineer Vs. Satyendra Rai** reported in **(2014) 4 SCC 513**, he contended that amendment of section 151 of the Electricity Act 2003, is retrospective in nature. Interpreting the judgment of **Ajoy Ghosh (supra)** he has contended that the proceeding initiated by the petitioner herein against the opposite party no.2 had not reached it's final logical conclusion and has not been decided on merit and in such view of the matter, said police case should have been treated as pending. Learned Trial Court further erred in law by observing that in view of the bar imposed under section 362 of the Cr.P.C., the same court cannot alter its own judgment, though no judgment on merit was passed earlier. Accordingly the petitioners had prayed for setting aside the order impugned and also for restoration of the police case for its logical conclusion after dropping the complaint case being case No. C/21/2007.

**5.** Opposite party no. 2 is not represented in the present case. Learned counsel appearing on behalf of the State leaves the matter for the decision of the court.

**6.** Learned trial court passed the order dated 8<sup>th</sup> March, 2007 in case no. Spl 41(12) 04 (E) with the observation that if he continues on the basis of police report, then it would be in defiance of provision under section 151 of the Act of 2003, as the law prevailing at that point of time and as such he discharged the accused person from his bail bond, as well as from the aforesaid police case. However, as I have mentioned above that few days

after passing the aforesaid order dated 08.03.2007, section 151 was amended and the amended provision reads as follows:-

*“151.cognizance of offences:-*

*“No Court shall take cognizance of an offence punishable under this Act except upon a complaint in the writing made by Appropriate government or Appropriate Commission or any of their officer authorized by them or a Chief Electricity Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose.*

*[Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973: Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.]*

*[151A. For the purposes of investigation of an offence punishable under this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973.*

*151B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under sections 135 to 140 or section 150 shall be cognizable and non-bailable.]”*

*(Emphasis added and the provisions within bracket incorporated by the Amendment Act of 2007)*

7. However, when this amendment of section 151 was brought to the notice of the court below and prayer was made for restoration of police case after dismissing the complaint case, the court rejected the said prayer mainly on two grounds firstly the above quoted judgment states that section 151 will apply in a pending proceeding, but in the present context said police case is not a pending proceeding, since the accused has already been discharged from the said proceeding by the order dated 8.03.2007 and secondly under section 362 of the Cr.P.C., court cannot alter its own judgment by which he has discharged the accused. In order to appreciate the situation relevant portion of the order impugned may be reproduced below:-

*“Now a question may arise whether this decision is applicable in a case which is not pending. Fact remains that the spl. Case No. 41(12) 04 was not concluded logically but it is fact that on this date the special case has got no existence. At the same time it can be said that under the Cr.P.C.*

*this court is not empowered to alter, cancel and review its earlier order. It is a fact that in the special case the accd. was discharged merely on technical grounds but at the same time it can be said that the decision of the Hon'ble court was passed in a case which was pending. So, after considering all such materials including the spirit of the observation of the Hon'ble Court regarding retrospective effect of sec. 151, Electricity Act, 2007, this court is of the view that this decision is not applicable in the present case. Accordingly the petition filed by the complainant dated 11.6.10 is considered and rejected with liberty to the complainant to proceed in the complaint. Case in accordance with law. At the same time complainant is given liberty to approach before the higher forum challenging the order of this court dated 30.1.15 for any further clarification of the observation of the Hon'ble Court regarding pending cases."*

8. A co ordinate bench of this court in **Ajoy Kumar Ghosh Case (Supra)** has clearly held that amendment of section 151 of the Electricity Act 2003(amendment Act 2007) is purely procedural in nature, which has merely altered the form of procedure and in absence of anything to the contrary, would apply retrospectively to all pending cases, even though such action may have began earlier but not reached to its logical conclusion. The relevant portion of the said judgment may be reproduced below

*"26. In the result, I hold that the Electricity Amendment Act, 2007 being retrospective in operation this will permit the court to take cognizance of offences punishable under the said Act on report submitted under section 173 of the code of Criminal Procedure, by the police in respect of all the pending cases where Charge-sheet has been filed but the case has not come to its logical conclusion before the amendment in question came into force and it must be held that all charge-sheet submitted by the police in court before the Amendment Act came into force were filed validly and the respective courts being always empowered to take cognizance of offence on the basis of such charge-sheet took cognizance lawfully."*

9. Though in the instant police case being special case no. 41(12) 04 (E), investigation has been culminated into a charge sheet and cognizance was also taken by the court, but the moot point that falls for consideration in the present case is whether said special case no. 41 (12) 04 (E) can be said to be a "pending proceeding", in view of the order passed by the court below dated 08.03.2007, by which the trial court though discharged the accused

person, but not on merit, nor had come to a logical conclusion while discharging the accused person but had given liberty to complainant to initiate complaint case under unamended provision of section 151.

**10.** On perusal of the order dated 8<sup>th</sup> March 2007, it appears that the trial court discharged the accused person only on the ground that continuation of the proceeding on the basis of police report may be in defiance of provision of unamended section 151 of the Act of 2003 which was prevailing at that point of time, though the trial court at the same time had given liberty to the complainant to prefer a complaint case in terms of said unamended section 151 of the Act of 2003. Needles to say that section 245 of the code of criminal procedure prescribes when accused shall be discharged in a warrant triable case and section 227 of the Code prescribes when discharge order can be passed in a sessions trial case. Under section 245 of the Code the court concerned shall discharge the accused person if upon taking all the evidence, court considers that no case against the petitioner has been made out. Here in the present case the ground of discharge vide order dated 08.03.2007 is not on the ground that the court concerned was satisfied that no case has been made out against the accused/petitioner and on the contrary the order impugned shows that liberty was given to the complainant to prefer a complaint case, presumably that a case has been made out against the accused. Accordingly the discharge order passed vide order no. 33 dated 08.03.2007 is apparently an illegal order, which cannot have any binding force, to attract section 362 of the Code of Criminal Procedure.

**11.** Furthermore by giving liberty to the complainant/CESC to initiate complaint case in accordance with law, by itself suggests that the criminal proceeding initiated by the complainant deemed to have pending and the complainant was merely asked to take appropriate procedural steps to continue with the said proceeding as per law prevailing under the unamended provision of section 151 of the act of 2003.

**12.** Moreover, in view of the cited judgement, it is not *res integra* that where in a case during police investigation, a person is found to have committed any offence punishable by law and he is liable to face a trial for the same, why his liability will come to an end, due to some obvious error committed in a legislative enactment, specially when such mistake or error has been cured and removed by the Amendment Act of 2007, which relates to the procedure to be adopted for continuance of such criminal proceeding. It has further been settled that when charge sheet has been filed but the case has not reached to its logical conclusion before the Amendment of 2007 came into force, the charge sheet submitted by the police in court before the Amendment Act, should continue on the basis of cognizance taken by the court concerned under the procedure established by the Amended Act.

**13.** The word 'logical conclusion' means a conclusion that is reached by carefully considering all relevant fact and deciding that something is true and it is the conclusion that can be reached from a series of facts or events based on the rules of logic. Accordingly a logical conclusion in legal parlance means an inference in the form of logic statement, i.e. supported by evidential statement. From that point of view also the aforesaid criminal proceeding being Special Case No. 41(12) 04 (E) had never reached in its

logical conclusion, since the discharge order was not passed, based on rules of logic, after considering all relevant facts and/or evidence.

**14.** In view of aforesaid discussion I am convinced to conclude that the prayer made by the petitioner deserves to be allowed.

**15. CRR 1590 of 2015** is thus allowed. The complaint case being case no. C/21/07 is hereby dropped and the designated trial court is directed to restore aforesaid special case no. 41 (12) 04 (E) in its original file and continue with further proceeding from the stage where it reached prior to passing order of discharge being order no. 33 dated 08.03.2007. In view of above, order no. 33 dated 08.03.2007 passed in special case no. 41(12) 04(E) and order no. 26 dated 30.01.2015 passed in C/21/2007 are hereby set aside.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

**(AJOY KUMAR MUKHERJEE, J.)**