

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 4348 OF 2022

WITH

CRAN 2 OF 2024

SANJOY HALDER & ORS.

VS.

THE STATE OF WEST BENGAL & ANR.

For the petitioners : Mr. Kalyan Kumar Bhattacharya,
Mr. Ibrahim Shaikh,
Ms. S. Khatun,
Ms. B. Shaikh.

For the State : Md. Anowar Hossain.

**For the Opposite
Party No. 2** : Ms. Juin Dutta Chakraborty.

Hearing concluded on : 14.11.2024

Judgment on : 20.11.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred praying for quashing of chargesheet no. 19 of 2022 arising out of Women PS Case No.54 of 2021 dated 22.12.2021 under Sections 323, 354 and 441 read with Section 34 of the Indian Penal Code, 1860, filed by the de facto complainant namely Madhumita Das being M.P. Case No.2412 of 2021.
2. The petitioners, case is that the complainant herein has filed a written complaint against the petitioners herein who are the employees of Kalpa-Taru Power Transmission Limited at present working at Shyamnagar beside Kalyani Expressway, PS – Jagaddal, Dist.- North 24 Pgs. The company has issued a certificate on 3rd January, 2022 declaring that the accused persons/petitioners are working in their company.
3. **The allegations in the written complaint is that:-**

“.....the complainant is the owner of Plot No.1046 (Khatian No.4086) and 1048 (Khatian No.1710) in Mouza – Rulya, PS – Rahara, Dist. – North 24 Pgs, wherein the Block Development Officer, Barrackpore-II, issued a letter as per Electricity Act, 2003, construction of 132 KV M/C Tr. Line Dharampur – Titagarh proposed Nilgunj 132/33 KV S/S by WBSETCL:- Finalization of Crop Compensation & Release of Local Obstruction on 08.10.2021. On 08.11.2021, the said Block Development Officer, Barrackpore-II issued a letter Sandhya Rani Pal, wife of Bhulu Ranjan Pal regarding the above purpose and requested her to be present on 16.11.2021 on the date for cooperating him. On 23.11.2021, the Kalpataru Power Transmission Limited Assistant General Manager (Project Execution) issued a letter for administrative support for hindrance in site activity due to severe ROW at Loc No.2/0 of Line 4 of PKG-AP. On 26.11.2021, the Additional Chief Engineer issued a letter to administrative support for site activity due to seivour ROW at Loc No.2/0 and 3/1 (Line 4, PKG-AP) wherein he wrote that they are facing strong resistance for execution of tower foundation work of Loc

No.2/0 & 3/1 at Rulya Mouza under Rahara PS. However, each time they approached the landowner they have faced severe obstruction and they are not allowing WBSETCL to execute the project. The matter has been escalated to local administration, accordingly one committee was formed on 31.07.2021 to resolve the ROW issue, Rahara PS was involved for settlement of issues. Further official letter from BDO was issued addressing to the landowner vide Letter No.2117/BKIP-II dated 8th October, 2021 for finalization of suitable compensation amount but they have been avoiding our discussion for compensation have not been turning up for the meeting for resolution. Again accordingly official letter was issued by the BDO (Barrackpore-II) on 08.11.2021 vide letter no. 2217 BKIP-II. Moreover, as observed the landowner of the said location is instigating other landowners of 3/1 for obstructing the execution activities of the subject and intentionally cooking up the law and order by involving mass. This line is being constructed to improvement of power scenario in the district of North 24 Pgs. and to eradicate the voltage problem and also to meet up the future demand of electricity in the said district.....”

4. The petitioners subsequently came to know that the present case has been initiated against them. **The petitioners were granted anticipatory bail** by the Hon’ble Court.
5. The Hon’ble Court while granting bail has observed that the allegations in the present case relates to electric installation on behalf of the aforesaid electric company. The Hon’ble Court keeping in mind the extent of complicity of the petitioners in the alleged crime and on finding that there was no injury report granted anticipatory bail to the petitioners.
6. The learned counsel for the State has placed the case diary and relied upon a resolution of a meeting, wherein it appears that the Government Authorities and the Officers of the department have taken a decision

regarding installation of the said electric tower in the said land (which is now in dispute).

7. On perusal of the application under Section 156(3) of Cr.P.C. which has been annexed to the revisional application, it appears that the complainant has stated that the petitioners herein have caused criminal trespass in her mother's agricultural land and when she rushed to the spot, she found the petitioners working with engineering apparatus and machineries on the land of her mother. She asked them to remove the said materials from the land. The petitioners informed the complainant that they had permission from the local BDO, Barrackpore-II to carry out the work.
8. It is further stated that on being obstructed the petitioners allegedly threatened the complainant and the family members and abused them in filthy language.
9. On hearing the parties and considering the materials in the case diary, it appears that there is no material on record to show that a prima facie case has been made out against the petitioners under Sections 323, 354 and 441 read with Section 34 of the IPC.
10. The petitioners were carrying out the work as directed by the Government as per decision taken in a meeting held on 26.03.2022 at 12.00 p.m. regarding construction of Jeerat-Mohispota 132 KV M/C Tr. Line (Line 3) & Dharampur-Titagarh 132 KV M/C Tr. Line (Line -4) at proposed Nilganj 132/33 KV GIS Sub-Station. (Location no. 2/0), held by the Sub Divisional Officer, Barrackpore. It appears from the said minutes of the

meeting that **the complainant in the present case was present in the said meeting as follows:-**

“.....The Sub Divisional Officer, Barrackpore presided over the meeting along with the presence of the Block Development Officer, Barrackpore II, the Savapati, Barrackpore- II Panchayat Samity, the Sahakari Savapati Barrackpore - II Panchayat Samity, the Junior Engineer, Barrackpore- II, the Inspector-in-Charge, Rahara Police Station & representatives of WBSETCL. The following persons on behalf of the land owner Smt. Sandhya Rani Paul were in the meeting:

- 1. Sri. Bhulu Ranjan Paul, Husband of Smt. Sandhya Rani Paul.*
- 2. **Smt. Madhumita Das, D/o Smt. Sandhya Rani Paul***
- 3. Sri. Sibananda Das, Husband of Smt. Madhumita Das*
- 4. Smt. Susmita Hore, D/o Smt. Sandhya Rani Paul*
- 5. Sri. Nibir Hore, Husband of Smt. Susmita Hore.....”*

11. The same is evident from the case diary produced in the present case. In spite of there being no materials on record including the case diary, the Investigating Officer has filed a chargesheet in the present case under Sections 323, 354 and 441 read with Section 34 of the IPC.

12. The complainant attended the said meeting on 26.03.2022 after filing the complaint in the present case on 22.12.21.

13. Section 323 IPC lays down:-

“323. Punishment for voluntarily causing hurt.—*Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.*

Ingredients of offence.—*The essential ingredients of the offence under Section 323 are as follows:-*

- (1) *Accused voluntarily caused bodily pain, disease or infirmity to the victim.*
- (2) *The accused did so with intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim."*

No such ingredients are prima facie found against the petitioners herein.

14. Section 354 of IPC, lays down:-

"354. Assault or criminal force to woman with intent to outrage her modesty.—*Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.*

Ingredients of offence. *-The essential ingredients of the offence under sec. 354 are as follows:-*

- (1) *A woman was assaulted or subjected to use of assault criminal force on her; and*
- (2) *The intention of the accused was to outrage her modesty - Vidyadharan v State (2004)1 SCC 215; or*
- (3) *The accused knew that her modesty will be outraged thereby.*

In Raja Pandurang v State (2004) 4 SCC 371: AIR 2004 SC 1677: 2004 Cr LJ 1441, the apex court has laid down the essential ingredients of offence under sec. 354 as under:-

- (a) *that the assault must be on woman;*
- (b) *that the accused must have used criminal force on her; and*
- (c) *that the criminal force must have been used on the woman intending thereby to outrage her modesty or knowing that his acts would likely to outrage her modesty."*

No such ingredients are prima facie found against the petitioners herein.

15. Section 441 IPC lays down:-

“441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

The petitioners entered the land as per Govt. order (BDO) and as such it was an authorized entry and also lawful. Thus the ingredients for criminal trespass are also not present in respect of the petitioners herein.

16. In *Sukumar Samanta & Others vs The State of West Bengal & Ors.*, in FMA 663 of 2022, decided on 16 January, 2023, the Calcutta High Court held:-

“..... 11. We have heard the advocates for the respective parties at length, we find that the primary question that falls for consideration in the instant appeal is whether the provisions relating to determination of compensation under the 1885 Act, can be made applicable in respect of works to be carried out by the transmission licensee, when empowered under Section 164 of the 2003 Act.

12. Before proceeding further we must indicate that perusal of Section 164 of the 2003 Act would demonstrate that in order to invoke the aforesaid section an order in writing from the appropriate Government, in this case being the State Government, needs to be issued. While responding to our query, Mr. Panja, has disclosed a notification dated 16th August, 2005 issued by the Principal Secretary, Government of West Bengal, wherefrom it would appear that the State Government in exercise of powers conferred by Section 164 of the said Act, has authorized the respondent no.2 to exercise all power vested in the telegraph authority under part III of the Act, 1885, in respect of electric lines and electric plant established or maintained, ought to be so established or maintained for transmission and/or supply of electricity or for the purpose of telephonic or telegraphic

communication necessary for the proper coordination of the works within the licence area of the respondent no.2.

13. *Sub rule 4 of rule 3 of 2006 Rules, provides that nothing in rule 3 shall affect the powers conferred upon any licensee under Section 164 of the said Act. Undoubtedly, 2006 Rules has been framed under Section 67(2) of the 2003 Act. From the aforesaid rules, it seen that the rule 3 of the 2006 Rules framed under Section 67(2) of the 2003 Act has not been made applicable in cases where the licensee has been empowered under 164 of the 2003 Act. As such there is no conflict in exercising powers under 1885 Act.*

14. *We must, however, note that the primary question, which fell for consideration as to whether the respondent no. 2, by reasons being vested with powers under 1885 Act, assumes the mantle of a Telegraph Authority within the meaning of the 1885 Act, insofar as payment determination of compensation is concerned, is no longer res integra. The Hon'ble Supreme Court in the case of Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited & Ors.1 has, inter alia, held :*

"19. Another submission made was that permission of the writ petitioner was not obtained which was needed as per Rule 3 of the 2006 Rules. Rule 3(a) reads as under:

"3. Licensee to carry out works.--(1) A licensee may--

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;"

20. In the instant case, the aforesaid Rule is not applicable in view of Section 164 of the Electricity Act, 2003, which reads as under:

Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited & Ors., (2017)5 SCC 143 "164. Exercise of powers of telegraph authority in certain cases.--The appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper coordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the appropriate

Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained."

21. It is not in dispute that in exercise of powers under the aforesaid provision, the appropriate Government has conferred the powers of telegraph authority vide Notification dated 24-12-2003 exercisable under the Telegraph Act, 1885 upon the Power Grid. It may also be mentioned that a Central transmission utility (CTU) is a deemed licensee under the second proviso to Section 14 of the Electricity Act, 2003. Power Grid is a Central transmission utility and is, therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid is treated as authority under the Telegraph Act, 1885, it acquires all such powers which are vested in a telegraph authority under the provisions of the Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country, economy and the well-being/progress of the citizens. The legislature has not permitted any kind of impediment/obstruction in achieving this objective and through the scheme of the Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines."....."

17. If a person duly authorized by the Government has to face such criminal charges as leveled by the complainant for acting in accordance with law, then it is clearly an abuse of process of law and such proceedings should not be allowed to continue in the interest of justice.
18. Thus considering the materials on record, it is evident that none of the ingredients required to constitute offences alleged to the present case are even prima facie present in respect of any of the petitioner herein and as such permitting such a proceedings to continue will be an abuse of

process of law and in the interest of justice, the present proceedings are liable to be quashed.

- 19. CRR 4348 of 2022 is thus allowed.**
- 20.** The proceeding being M.P. Case No. 2412 of 21 and the chargesheet therein, arising out of Women PS Case No.54 of 2021 dated 22.12.2021 under Sections 323, 354 and 441 read with Section 34 of the Indian Penal Code, 1860, **is hereby quashed in respect of all the petitioners herein namely Sanjoy Halder, Souvik Dutta, Raktim Dey.**
- 21.** All connected application, if any, stands disposed of.
- 22.** Interim order, if any, stands vacated.
- 23.** Let a copy of the judgment be sent to the learned trial Court for compliance.
- 24.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)