

(2022) 10 PAT CK 0030

Patna High Court

Case No: Criminal Writ Jurisdiction Case No. 202 Of 2017

Sanjeev Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Oct. 17, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Bihar Electricity Duty Act, 1948 - Section 135, 138
- Electricity Act, 2003 - Section 126, 135, 135(1), 138, 152(2), 152(3), 152(4)
- Code Of Criminal Procedure, 1973 - Section 317, 468
- Electricity Act, 1910 - Section 26(6), 39, 44
- Indian Penal Code, 1860 - Section 379

Hon'ble Judges: Rajeev Ranjan Prasad, J

Bench: Single Bench

Advocate: Ravi Shankar Ganguly, Yogesh Kumar

Judgement

Heard learned counsel for the petitioner and the State. The petitioner in the present writ application is seeking a declaration that if the meter removed

from the site of the raid has not been sent following the laid down procedure, the punitive bills, the F.I.R. - Rupaspur P.S. Case No. 51/2010 dated

09.08.2010 and the order taking cognizance under Section 135/138 of the Bihar Electricity Act are fit to be quashed. A further prayer has been made

that any payment made against a punitive electric bill (Annexure 4) if collected against any wrong punitive action/actions/order (Annexure No.

3) should be set-aside and the amount so paid to the respondent be refunded to the petitioner with interest.

Brief Facts

Petitioner is the director of a firm known as M/s Electronic Net @ ICT. It is a partnership firm. The firm had its office at Rukanpura, Patna

where it was having a training room. On 09.08.2010, a team consisting of Electrical Engineers and few other officials of the Bihar State Electricity

Board (hereinafter referred to as the "Board") conducted a raid in the business premises of the petitioner. The petitioner was not present at

Patna, thus, the team was assisted by some officials and the students who did not have the full knowledge of the set-up of the office of the petitioner.

Subsequent to the raid so conducted, the respondent served an inspection-cum-seizure report to the petitioner under Section 135 of the Electricity Act,

2003 (hereinafter referred to as the "Act of 2003").

It is stated that on the next date, the respondent issued a letter to the petitioner from which the petitioner came to know that the team had found the

petitioner being involved in theft of electricity for the benefit of his firm by tampering the electric meter installed in the business premises. The letter

also informed that the respondent had lodged an F.I.R. against the petitioner at P.S. " Rukanpura, Patna giving rise to Case No. 51/2010 dated

09.08.2010 under Section 135/138 of the Act of 2003. The respondent claimed that they had to incur an approximate loss of Rs. 8 Lakhs. According

to the F.I.R., the electric wire supplying electricity to the firm of the petitioner was disconnected from the supply pole and the meter was removed

after the same being wrapped under a red piece of cloth.

The petitioner was served with a provisional bill amounting to Rs. 10,24,639/-. It was a bill raised under Section 126 of the Act of 2003. The petitioner

admits that he was called upon to submit his objection, if any, before the respondent by 3:00 P.M. on 07.09.2010, failing which the respondent would

treat the provisional bill as if the same was given as punitive bill to the petitioner. It is stated that without waiting for the representation of the

petitioner, respondent sent another report dated 10.08.2010 wherein a provisional cum punitive assessment order was passed.

It is stated that having been rejected and frustrated by the approach of the respondents, the petitioner deposited the entire amount into the account of

the respondent and submitted a forwarding letter to the respondent explaining the deposit made against the punitive bill. A copy of this letter has been

brought on record as Annexure ~4™ series. The petitioner has made certain submissions as regards the calculation of the punitive bill.

Grounds for quashing

The petitioner has sought quashing of the First Information Report on the ground inter alia that no cut wires were seized from the pilfering point

through which a bypass of electricity could be made. No independent witness was present and no videography was done while preparing the seizure

during the raid. No charge-sheet had been submitted by the P.S. concerned till date and as such no cognizance had been taken by the learned court.

Since the punishment prescribed under the Act is only for a period of three years imprisonment, the cognizance was also supposed to be taken within

three years from the date of lodging the F.I.R., the F.I.R. is, therefore, not sustainable under Section 468 of the Code of Criminal Procedure.

It is further submitted that the meter and its™s plastic box were never sealed and even if the stand of the respondent that it was sealed, be assumed,

it would be strange to note that these irregularities like breaking of the seal and meter were never reported by the meter reader. Petitioner has

challenged the punitive bill alleging that the petitioner was not allowed to represent on the date fixed by the respondent and the report and the order for

the punitive bills signed by the authorities were not supported by any documents. It is submitted that for a long time after the raid was conducted the

petitioner is yet to receive any communication in regard to his electric meter.

During pendency of the writ application, one intervention petition being I.A. No. 904/2017 has been filed on behalf of one Ashok Kumar, son of

P.N.L. Srivastava who is neither accused nor a suspect in the case. He has submitted that the allegations levelled against the petitioner were frivolous

and fictitious and the petitioner has been falsely implicated in the case just to harass him and to wreak vengeance against him. The intervention

application seems to have remained pending.

Stand of the Respondent Nos. 2 to 4

The respondent no. 2 to 4 has filed a counter affidavit through their Law Officer. It is stated that the petitioner was using electricity through tampered

meter by breaking the seal of the meter box and the terminal of the meter having seal no. 3967394 and 408026 respectively. He had illegally replaced the same seals with seal no. 283421 and 283439 respectively. During the inspection, upon testing the supply of electricity with clamp meter (tongue tester), it was found that flow of current as per clamp meter was 33.2A, 33.5A and 21.2A through outgoing phases R,Y & B respectively whereas the flow of current through the meter in premises was 9.26A, 4.8A and 2.85A through outgoing phases R,Y& B respectively. Hence, according to the respondents it is clear that the meter was tampered.

It is stated that a written complaint was lodged in Rupaspur Police Station in accordance with law and a provisional assessment order was served upon the petitioner vide letter no. 329 dated 10.08.2010 of Assessing Officer-cum-Assistant Electrical Engineer, Electric Supply Sub-Division, Khajpura, Patna enclosing a provisional punitive bill of Rs. 10,24,639/- and calculation charge in which seven daysâ€™ time for filing objection and date of hearing was fixed on 07.09.2010 at 3:00 P.M.

The punitive bill was raised and served in terms of Bihar Electricity Supply Code, 2007. The petitioner paid the said punitive bill on 13.08.2010 and he submitted a letter on 17.08.2010 to the respondent no. 4 i.e. Assessing Officer. The petitioner had not filed any objection/appeal before Electric Inspector, PESU, Patna against the inspection dated 09.08.2010.

It is stated that the meter was not found defective but it was found tampered, therefore, the petitioner was found indulged in theft of electricity as per Section 135(1) of the Act of 2003. A copy of the inspection cum seizure report was served upon Sri Ashok Kumar, Manager/Representative of the Consumer who was present in the premises.

Submissions of the petitioner

Mr. R.S. Ganguli, learned counsel for the petitioner has, while arguing the matter on 16.09.2022 submitted that so far as the grievance of the petitioner regarding the punitive bills are concerned, since the assessments have already been done, he challenged the assessment order in an appropriate proceeding, therefore, that issue is not being pressed in this Criminal Writ Jurisdiction matter. Mr. Ganguli has sought quashing of the FIR on the

ground that the investigation of the case was kept pending for five years and ultimately a charge-sheet was filed on 27.08.2015. According to him, the

order taking cognizance is barred by limitation in terms of Section 468 of the Code of Criminal Procedure.

By filing a written notes of argument, Mr. Ganguli, learned Advocate, has extended his submissions. He has submitted that the theft of electricity has

to be established by having a report of the Electrical Meter Engineer/Inspector and without such report, jumping on the conclusion that a theft of

electricity has been committed is bad in the eyes of law. He has submitted that if there is a theft of electricity, the electric meter is supposed to be

checked by the Inspector of Meter appointed by the State and if the same is found defective, then only average of six months electric bill could be

raised. It is his submission that no FIR is sustainable in such case. He has referred Section 26(6) of the Electricity Act, 1910. Learned counsel has

further relied upon the judgments of this Court in the case of Shyamal Kumar Sur Vs. The State of Bihar reported in 1994 (2) BLJR 1275; Bihar State

Electricity Board and Ors. Vs. Shakti Cold Storage, Garbhuchak, Patna and Anr. reported in 2013(4) PLJR 677; Anant Kumar Vs. State of Bihar &

Anr. reported in 2010(4) BBCJ 363 and Mosmat Swaran @ Swaran Manraw Vs. State of Bihar & Anr. reported in 2012 (2) PLJR 229. One of his

submissions is that the petitioner has already paid the assessed amount, therefore, the offences under Section 135/138 of the Act of 2003 will be taken

to have been compounded under Section 152(2) and (3) of the Act of 2003. It is submitted that in view of the settled position in Anant Kumar (supra)

the criminal prosecution of the petitioner may not be allowed to go on. He has lastly relied upon the judgment of the Honâ€™ble Supreme Court in the

case of State of Haryana Vs. Bhajan Lal and Others reported in AIR 1992 SC 602 to submit that where the uncontroverted allegations made in the

F.I.R. or complaint and the evidences collected in support of the same do not disclose the commission of an offence, the F.I.R. is fit to be quashed.

No one appeared for the Power Company

As recorded in the order dated 16.09.2022, no one appeared on behalf of the Power Company on the date of hearing. Even as this Court granted

opportunity to learned counsel for the petitioner and the State to file their respective notes of arguments, only the petitioner has submitted the written notes of argument as stated hereinabove.

Consideration

Having heard learned counsel for the petitioner and upon perusal of the records, this Court finds that the present writ application as framed cannot succeed for the following reasons:-

(i) On a plain reading of the FIR without adding or subtracting anything out of it to this Court it appears that the F.I.R. discloses commission of an offence under Sections 135 and 138 of the Act of 2003.

(ii) The contention of learned counsel for the petitioner that the investigation of the case remained pending for last five years is not correct. From the order-sheets of the learned court below it would appear that in this case the learned court below took cognizance of the offences under Sections 135

and 138 of the Act of 2003 on 27.09.2010 and fixed 10.11.2010 as the date for appearance of the accused. In the typed copy of the order dated

27.09.2010 annexed by the petitioner, a typographical error has been committed by the petitioner inasmuch as it shows the date of order as 27.08.2015

but in the last line the date of appearance of the accused is 10.01.2010. The subsequent orders would show that on 30.11.2010 the learned Magistrate

directed for issuance of summons to the accused persons and thereafter the case remained pending for appearance of the accused. On 28.02.2012

the accused-petitioner appeared and prayed for allowing him to continue on earlier bail bond. The subsequent order-sheet would also show that the

case remained pending for some time on the transfer of the Presiding Officer and thereafter the petitioner was filing application under Section 317

Cr.P.C. Under these circumstances the plea of Section 468 Cr.P.C. would not succeed.

(iii) The submission of the petitioner as regards the allegation of theft of electricity by tampering of meter cannot be tested at this stage in the present proceeding. Those are the subject matter of trial.

(iv) The submission that the petitioner has deposited the amount under the punitive bill, therefore, it will be a case of compounding of the offence as

envisaged under Section 152 (2) and (3) of the Act of 2003 seems to be a wholly misconceived plea. In the case of Mosmat Swaran @ Swaran

Manraw (supra) the Honâ€™ble Division Bench of this Court has discussed in detail the distinction between Section 126 and Section 135 of the Act

of 2003. The Honâ€™ble Division Bench has traced the legislative history of the theft as statutorily defined under Sections 39/44 of the Electricity

Act, 1910 and Section 379 I.P.C being referred to only for the purposes of punishment that is to be awarded without being a substantive offence

punishable under Section 379 of the I.P.C. under the Indian Electricity Act, 1910. It has been found that the Electricity Act of 1910, Electricity

(Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1988 have been repealed and replaced by the Electricity Act, 2003 as a

comprehensive legislation in this regard. The basic distinction between the two provisions i.e. Section 126 and Section 135 of the Act of 2003 are that

while Section 126 provides for situations where unauthorized usage of energy is found as defined therein and authorizes the specified assessing officer

to assess to the best of his judgement the electricity charges payable by such person who uses electricity unauthorisedly, Section 135 of the Act of

2003 talks of dishonest abstraction or consumption or uses of electricity. The essential difference between the two provisions have been pointed out by

the Honâ€™ble Apex Court in the case of Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) & Another Vs.

Sri Seetaram Rice Mill, since reported in (2012) 2 SCC 108.

The Honâ€™ble Division Bench held that Section 152 of the Act of 2003 is for compounding of offences. It clearly provides how offences of theft of

electricity punishable under the Act may be compounded. A table of compounding fee is prescribed therein and it clearly states that the appropriate

authority may accept from the consumer a sum of money by way of compounding of offences as specified and the effect of payment would be that

the criminal proceedings would stand terminated and would amount to acquittal. Sub-section (4) of Section 152 clearly stipulates the disability clause

and provides that compounding of offences would be available to a person only once. The Honâ€™ble Division Bench having noticed two lines of

cases decided by the Honâ€™ble High Court held that the judgements of this Court in the case of K.N. Ram @ Kedar Nath Ram Vs. The State of

Bihar and another reported in 2007 (3) PWR 484, Sanjay Kumar Yadav & another Vs. The State of Bihar and another reported in 2008(4) PLJR 665,

Vimala Prasad Vs. Bihar State Electricity Board and others reported in 2009(2) PLR 991, Sri Anant Kumar Vs. The State of Bihar and others

reported in 2009(3) PLJR 987 and Prabhash Kumar Vs. The State of Bihar and another reported in 2010(1) PLR 966 which merely hold that as the

delinquent consumer has paid the punitive amount of loss as mentioned in the FIR or assessed under Section 126, the prosecution cannot continue do

not lay down the correct proposition of law as in absence of compounding fee being paid as contemplated under Section 152 the offences cannot be

compounded.

The Honâ€™ble Division Bench concurred with and approved the decisions of this Court taken in the case of Kamaljeet Singh Vs. The Bihar State

Electricity Board and others since reported in 2010(3) PLJR 514, M/S Zee Saheb Cosmetic Zone through its Proprietor Mr. Rajiv Ranjan Gupta vs.

The Bihar State Electricity Board and others since reported in 2010(4) PLJR 863, M/s S.K. Food Product Vs. The Bihar State Electricity Board and

others since reported in 2011(1) PLJR 949 and Md. Sakil Ahmad vs. The Bihar State Electricity Board and others since reported in 2012(1) PLJR 63.

These judgements have been found to be in consonance with the scheme of the Act of 2003.

As noticed above, the petitioner has sought to come out of the prosecution citing the judgement in the case of Anant Kumar (supra) which has been

held not laying down the correct law.

In result, this writ application fails. This Court sitting under Article 226 of the Constitution of India may, however mould the reliefs in the facts and

circumstances of a case. In the present case, this Court has noticed that the prosecution in this case is pending for more than 12 years. The learned

trial court must conclude the trial within a period of six months from the date of communication of this matter failing which petitioner will be at liberty

to avail his remedy on suitable grounds.

In the meantime, if so advised, petitioner may apply before the competent authority/respondents for compounding. If such an application is filed by the petitioner, the respondents shall take a decision thereon positively within 30 days from the date of submission of the application.

This application stands disposed of accordingly.