

(2011) 09 JH CK 0133

Jharkhand High Court

Case No: Criminal M.P. No. 754 of 2007

Gazala Parveen

APPELLANT

Vs

The State of Jharkhand
and Ramprakash
Yadav

RESPONDENT

Date of Decision: Sept. 21, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Electricity Act, 2003 - Section 135, 136, 137, 139

Citation: (2011) 09 JH CK 0133

Hon'ble Judges: Prashant Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Prashant Kumar

1. This application has been filed for quashing the first information report in connection with Kotwali (Sukhdeo Nagar) P.S. Case No: 804 dated 10.11.2006 under Sections 135, 136, 137, 139 of the Electricity Act.

2. It is submitted by Sri Prashant Pallav, learned counsel for petitioner that electrical connection of petitioner was never disconnected, therefore, question of theft of electrical energy does not arise. He further submits that respondent Board has been impleaded and asked to file counter-affidavit, but Board has not filed counter-affidavit, thus, it will be presumed that electrical connection of petitioner was not disconnected on the date of alleged raid conducted by board officials. Accordingly, it is prayed that F.I.R. be quashed.

3. On the other hand, Sri Vijay Pratap Singh, learned Senior Advocate appearing for the Electricity Board, submits that it is well settled that F.I.R. can be quashed only if from the allegations made therein, no offence is made out. It is further submitted that in the instant case F.I.R. reveals that electrical connection of petitioner"s premises disconnected and he was extracting electrical energy illegally by hooking. From the aforesaid allegation, offence u/s 135 of the Electricity Act 2003 is made out. He further submits that it is well settled that while exercising jurisdiction u/s 482 of the Code of Criminal Procedure, it is not open for this Court to ask informant to adduce evidence in support of allegations made in first information report. It is submitted that such evidence can be adduced after commencement of trial.

4. Sri Prashant Pallav, in reply to aforesaid submission made by Sri V.P. Singh submits that Supreme Court in All Cargo Movers (I) Pvt. Ltd and Ors. versus Dhanesh Badamal Jain and Anr. has held that while exercising jurisdiction u/s 482 of the Code of Criminal Procedure, the High Court can take into consideration not only admitted facts, but also can look into the admitted documents. It is submitted that if from perusal of admitted documents no case is made out, then the prosecution can be quashed.

5. Having heard the submissions, I have gone through the record of the case. Admittedly in the first information report there is allegation that petitioner was extracting electrical energy by hooking. It is also alleged that electrical connection of petitioner"s premises had already been disconnected. It is worth mentioning that petitioner at paragraph number 6 of this application stated that electrical connection of petitioner"s premises never disconnected, nor any notice served upon petitioner for such disconnection. However in support of above statement petitioner did not annex any bill, issued by Jharkhand State Electricity Board, of the period prior to lodging of first information report. Under the said circumstance, judgment of Supreme Court in All Cargo Movers Case (Supra) has no application in this case, because it is not admitted by J.S.E.B. that electrical connection of petitioner never disconnected nor petitioner annexed any admitted documents to show that allegation made in first information report is incorrect.

6. It has been held by their Lordships of Supreme Court in [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), that High Court in exercise of power under Article 226 or u/s 482 of the Code of Criminal Procedure can quash the first information report if the allegations made in the first information report are taken to be true on their face value, no offence is made out. Thus at this stage it is not open for this Court to ask any party to prove allegation by adducing evidence. In the instant case, as noticed above, from the allegations made in the first information report, prima-facie offence u/s 135 of the Electricity Act is made out. Thus I find no reason to interfere with first information report.

7. In view of the discussions made above, I find no merit in this application. Same is accordingly dismissed.