

(2008) 02 CAL CK 0017

Calcutta High Court

Case No: C.R.R. No. 241 of 2007

Jubbar Mondal

APPELLANT

Vs

State of West Bengal and
Another

RESPONDENT

Date of Decision: Feb. 22, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 482
- General Clauses Act, 1897 - Section 26
- Penal Code, 1860 (IPC) - Section 378, 379

Hon'ble Judges: Arunabha Basu, J

Bench: Single Bench

Advocate: S.U. Ahmed, for the Appellant; J.N. Chatterjee for the opposite Party No. 2;
Krishna Ghosh, for the Respondent

Judgement

Arunabha Basu, J.

The Judgment of the Court was delivered by:

1. The application u/s 482 of the Code of Criminal Procedure is directed to quash the proceeding consequent to the charge sheet filed by police in connection with a case u/s 135 of the Indian Electricity Act and section 379 of the Indian Penal Code in connection with Chapra PS Case No. 86 dated 12th April, 2005

2. It is the case of the petitioner that he was enjoying electricity connection under No. IND/239 with Consumer No. 1300533. On 12th April, 2005 the officers of the Electricity Department conducted inspection in the wheat grinding facility of the petitioner and effected seizure of certain articles including the meter. Ultimately a complaint in the form of First Information Report was lodged at the Chapra Police Station on 12th April, 2004 being FIR No. 0086. Petitioner deposited certain amount towards provisional assessment.

3. It is the contention of the petitioner that provisional assessment is highly arbitrary. Petitioner was aggrieved by the act of the authority and ultimately he filed a Writ being W.P. No. 12227 (W) of 2005 before this Court and the same is still pending.

4. Petitioner moved before the learned Court below for staying all further proceeding of the case but the learned Court below rejected the prayer and ultimately issued warrant of arrest against the petitioner by order dated 27.6.2005. Petitioner being aggrieved by the said order/preferred a revisional application/which was registered as C.R.R. No. 1998 of 2005 for quashing the FIR. In the meantime as charge sheet was already submitted without the knowledge of the petitioner, the revisional Application became infructuous and ultimately the revisional application is dismissed on 23rd November, 2006. The charge sheet, which is submitted by police, is illegal, as the provision u/s 135 of the Electricity Act does not give any jurisdiction upon the police to conduct investigation and to submit report u/s 379 of the Indian Penal Code.

5. It is also stated that prosecution for commission of offence u/s 135 of the Electricity Act can only be instituted on the basis of complaint lodged by the officer/authority, as provided u/s 151 of the Act and as the said section read with other section of the said Act, creates a special provision about the mode of taking cognizance and as police is not so empowered either to investigate or to submit report, then no cognizance can be taken on the basis of police report.

6. It is also submitted that charge sheet is submitted u/s 379 of the Indian Penal Code read with section 135 of the Indian Electricity Act and as such the said charge sheet is not maintainable in the eye of law.

7. Learned Advocate appearing for the opposite party, however, submitted that the case is very much maintainable in view of the subsequent Amendment of the Electricity Act. However, it is the contention of the learned Advocate for the petitioner that the said Amendment will be prospective in operation and it cannot be given retrospective effect.

8. Consequent to the Amendment inserted by Electricity (Amendment) Act, 2007 and incorporation of section 151A in the Electricity Act consequent to the Electricity (Amendment) Act, 2007, it is now provided that cognizance of an offence punishable under the Act may be taken upon the police report filed u/s 173 of the Code of Criminal Procedure,

9. Section 151A of the Act empowers the police officer in terms of Chapter XII of the Code of Criminal Procedure. Section 151B which is also inserted by Electricity (Amendment) Act, 2007 provides that all offences punishable u/s 135 to section 140 or section 150 of the Electricity Act shall be cognizable and non-bailable.

10. It is correct that the said Amendment came into force consequent to the Amendment Act, 2007.

11. The Amendment relates to procedural matter about taking of cognizance whether the said amendment is prospective or retrospective is no more res integra.

12. This Court in Ajoy Kumar Ghosh vs. State of West Bengal & Anr., reported in 2007(2) C Cr. LR (Cal) 463, considered the scope of the amendment to the Electricity Act and held that the Electricity (Amendment) Act, 2007 being retrospective in operation. The same will permit the Court to take cognizance of the offence punishable under the said Act on police report.

13. In Subhash Chatterjee vs. State of West Bengal & Anr., reported in 2007(2) CLJ (Cal) 578, learned Single Judge of this Court held that the amendment is retrospective in force.

14. The same point was also taken up for consideration by me on earlier occasion in C.R.R. No. 1224 of 2007 and it was also decided that the amendment is retrospective in effect.

15. Such being the position of law as enunciated by this Court on number of occasions. So far as the effect of amendment of the Electricity Act is concerned, the cognizance is taken on the basis of the report submitted by police u/s 173 of the Code of Criminal Procedure is perfectly valid and the same cannot be interfered in connection with the revisional application filed u/s 482 of the Code of Criminal Procedure.

16. However, with regard to the second point that the charge sheet is submitted u/s 135 of the Indian Electricity Act and also u/s 379 of the Indian Penal Code, the contention of the learned Advocate appears to have some merit.

17. Plain reading of the language as stipulated u/s 135 of the Electricity Act clearly shows that the said section deals with theft of electricity. Section 135 of the Electricity Act as framed by the legislature clearly stipulates that in connection with all types of cases coming under the purview of the theft of electricity, the same is covered u/s 135 of the Electricity Act.

18. So far as the present case is concerned, it is clear that the case is being proceeded for theft of electricity covered u/s 135 of the Act.

19. Section 379 of the Indian Penal Code prescribes punishment for offence of theft.

20. Theft is defined u/s 378 of the Indian Penal Code, which is a general provision about the theft of any movable property.

21. Theft of electricity shall also come within the ambit of section 378 of the Indian Penal Code, but so far as this matter is concerned, it has to be borne in mind that theft of electricity is offence within the provision of Electricity Act, which is a special

Act dealing with the subject of electricity including the commission of offence and punishment thereof in respect of offence against theft of electricity. When special provision is prescribed, normally the general provision will not be attracted unless there is a clear intention of the legislature to that effect.

22. Section 135 of the Electricity Act is completely silent about the provisions of Indian Penal Code.

23. In addition to what has been stated above, the continuation of the proceeding both for offence u/s 135 of the Electricity Act as well as for the offence u/s 379 of the Indian Penal Code, will be illegal in view of section 26 of the General Clauses Act, 1897.

24. The said section is set out below:

26. Provision as to offences punishable under two or more enactments.- Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

25. In this view of the matter and in view of specific embargo as provided u/s 26 of the General Clauses Act, 1897, the petitioner can only be tried for commission of offence punishable u/s 135 of the Indian Electricity Act and not u/s 379 of the Indian Penal Code. So far as the charge sheet in respect of section 379 of the Indian Penal Code is concerned, the same is quashed.

26. Learned Court below shall only proceed with the offence u/s 135 of the Indian Electricity Act against the petitioner.

27. With this observation and direction, the revisional application is disposed of.

28. There shall be no order as to costs.

29. Interim order granted earlier stands vacated.

30. Urgent certified copy of the order may be supplied by the Criminal Section as and when applied for.