

(2007) 09 CAL CK 0046

Calcutta High Court

Case No: C.R.R. No. 1965 of 2007

Md. Nurul Huda

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Sept. 21, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173, 460
- Electricity Act, 2003 - Section 135, 151, 153, 154(2)
- Penal Code, 1860 (IPC) - Section 379

Citation: (2008) 3 CHN 817

Hon'ble Judges: Ashim Kumar Roy, J

Bench: Single Bench

Advocate: Lakshminath Bhattacharya, for the Appellant; Madhuri Das, for the Respondent

Final Decision: Dismissed

Judgement

Ashim Kumar Roy, J.

In this criminal revisional application the petitioner challenged the order dated January 9, 2007 passed by the learned Chief Judicial Magistrate in-charge, Suri, Birbhum, in connection with G.R. Case No. 65/05 arising out of Sadaipur Police Station Case No. 5/05 u/s 135 of the Electricity Act and u/s 379 of the Indian Penal Code as well as prayed for quashing of the proceedings relating to the said case on the ground taking cognizance of an offence punishable u/s 135 of the Electricity Act on a chargesheet submitted by a police officer is illegal and without jurisdiction.

2. So far as the impugned order dated January 9, 2007 is concerned, I find by that order the learned Magistrate fixed a date for supply of the copy as the same was not ready. The learned Advocate of the petitioner could not enlighten this Court on what ground the same has been challenged nor any illegality which vitiates the said order.

3. The only point that has been canvassed in support of prayer for quashing of the impugned proceedings is this, that taking cognizance of an offence punishable under the Electricity Act, 2003 on a police report is wholly illegal and without jurisdiction. The embargo contained in Section 151 of the Electricity Act, 2003, clearly prohibits taking of cognizance of an offence punishable under the said Act, except on a complaint made to the Court by the authorities specified thereunder, and the report of a police officer submitted u/s 173 of the Code of Criminal Procedure does not come within the ambit of the said provisions.

4. Heard, Mr. Lakshminath Bhattacharya, the learned Advocate appearing on behalf of the petitioner as well as Smt. Madhuri Das, the learned Advocate appearing on behalf of the State. Perused the materials record.

5. The brief facts of the case are as follows:

(a) On 8.2.2005 between 14.45 to 15.15 hours the complainant Sunil Kumar Mondal, Station Manager, Chandrapur Group Electric Supply Office, W.B.S.E.B. being accompanied by the other officers of the W.B.S.E.B. had been to the domestic and industrial premises of the petitioner Md. Nurul Huda, village Hazrapur, Police Station Sadaipur, Birbhum and found that the petitioner was consuming electricity by hooking directly through P.V.C. Cable from the W.B.S.E.B. Mains. Following detection of such unauthorized and illegal consumption of electricity the said Station Manager of W.B.S.E.B. made a complaint in writing to the Officer-in-Charge, Sadaipur Police Station, Birbhum on the self-same day. Whereupon the police recorded an FIR u/s 135 of the Electricity Act and Section 379 of the Indian Penal Code and commenced investigation.

(b) After completion of investigation chargesheet u/s 135 of the Electricity Act, 2003 and u/s 379 of the Indian Penal Code was submitted by the police before the learned Chief Judicial Magistrate, Suri, whereupon the learned Magistrate took cognizance.

6. However, during the pendency of the instant criminal revisional application the Electricity (Amendment) Act, 2007 came into force with effect from June 15, 2007, an Act further to amend the Electricity Act, 2003.

7. The Electricity (Amendment) Act, 2007 amongst other amended Section 151 of the principal Act, i.e. the Electricity Act, 2003.

By such amendment the following provisos have been inserted in Section 151 of the principal Act.

Provided that Court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed u/s 173 of the Code of Criminal Procedure, 1973.

Provided further that a Special Court constituted u/s 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.

8. Earlier an identical question of law came up for consideration before this Hon"ble Court in C.R.R. No. 2374 of 2007 relating to the case of Ajoy Kumar Ghosh v. State of West Bengal, wherein this Court held that the aforesaid amendment of Section 151 of the principal Act, i.e. the Electricity Act, 2003 by the Electricity (Amendment) Act, 2007, whereby the Court has been empowered to take cognizance of offences punishable under the Electricity Act also on a report submitted by a police officer u/s 173 of the Code of Criminal Procedure, being purely procedural in nature which has just altered the form of procedure and further such amending Act being a curative and declaratory statute shall operate retrospectively as such all orders of taking cognizance of offences punishable under the said Act on a report submitted by a police officer u/s 173 of the Code of Criminal Procedure, even where chargesheet has been filed before the amendment in question came into force, are lawful and never suffers from lack of jurisdiction.

9. Thus, in the instant case it must be held that the impugned chargesheet on which Court took cognizance of an offence punishable under the Electricity Act, even though filed before the amendment Act came into force, was filed validly and the Court took cognizance lawfully.

10. The Electricity Act, 2003 nowhere empowers any particular Court to take cognizance of offences under the said Act, but only provided all the offences punishable under the said Act are exclusively triable by a Special Court, constituted under the said Act. Thus, it cannot be said the impugned order of taking cognizance by the learned Chief Judicial Magistrate is not lawful. Moreover, in terms of specific provision contained in Sub-section (e) of Section 460 of the Code of Criminal Procedure, even if, cognizance is taken erroneously by a Magistrate without being so empowered same is a mere irregularity and that does not vitiate the proceeding.

11. Last but not least although in the instant criminal revisional application the petitioner challenged the order of taking cognizance of offence punishable u/s 135 of the Electricity Act by the learned Chief Judicial Magistrate, Birbhum on a police report i.e. chargesheet but it appears from the perusal of the records that such cognizance was taken as far back as on May 13, 2005 while this criminal revisional application has been filed in Court on May 18, 2007, i.e. nearly after 2 years without any application for condonation of delay. Accordingly, this criminal revisional application is hopelessly time barred and is not maintainable.

12. In view of above, I do not find any merit in this criminal revision and the same is dismissed.

13. I, however, make it clear that remaining other grounds on which the petitioner sought for quashing of the proceeding, being pure question of facts, has not been gone into and this order will not preclude the petitioner to raise those points before

the Trial Court at the appropriate stage, if so advised.

14. The learned Chief Judicial Magistrate, Suri before whom the aforesaid G.R. Case No. 65/05 relating to the offence punishable under the Electricity Act, 2003 is pending is directed to transfer the case to the Special Court under Electricity Act, Birbhum in terms of the provision of Section 154(2) of the Electricity Act.

15. The learned Chief Judicial Magistrate, Suri is further directed to transfer the records of the case to the Court of the learned Special Judge under Electricity Act, Birbhum within a week from receipt of communication of this order, whereupon the learned Special Judge under Electricity Act, Birbhum commence the trial and shall conclude the same within six months thereof in accordance with law.

16. The office is directed to communicate this order, at once, to the Court of the learned Chief Judicial Magistrate, Suri, Birbhum and to the Court of the learned Special Judge, under the Electricity Act, Birbhum.

17. Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible.