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Court : Kolkata

Decided On : May-04-2007

Reported in : AIR2007Cal189,2007(2)CHN657

Judge : Biswanath Somadder, J.

Acts : [Electricity Act, 2003](#) - Sections 135 and 151; ;[Indian Penal Code \(IPC\), 1860](#) - Section 379; ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173, 401 and 482

Appeal No. : C.R.R. No. 301 of 2005

Appellant : Biswanath Patra

Respondent : Divisional Engineer (E) S and Lp and State

Advocate for Def. : Debabrata Roy, Adv.

Advocate for Pet/Ap. : P.K. Roy, Adv.

Judgement :

Biswanath Somadder, J.

1. Pursuant to the earlier order passed by this Court, supplementary affidavit filed on behalf of the petitioners in Court today, be kept on record.

2. This is an application under Section 482 read with Section 401 of the Criminal Procedure Code, 1973, for quashing of proceedings arising out of Taldanga P.S. Case No. 44 of 2004 dated 9th October, 2004 under Section 135(i)(c) of the [Electricity Act, 2003](#), read with Section 379 of the Indian Penal Code corresponding G.R. Case No. 234 of 2004 pending before the learned Sub-Divisional Judicial Magistrate, Khatra, Bankura.

3. From the case made out by the petitioner in the present application and after having heard the learned Advocate appearing on behalf of the petitioner and the learned Advocate appearing on behalf of the State, it appears that there are two questions of law involved in the instant case. These are:

(1) Whether the Court can take cognizance of an offence punishable under the [Electricity Act, 2003](#) upon a complaint in writing made by any person other than one who is authorised to do so under the provisions of Section 151 of the said Act?

(2) Whether an offence under Section 379 of the Indian Penal Code will lie for theft of electricity, when for the self-same offence a person is charged under Section 135(i)(c) of the [Electricity Act, 2003](#)?

4. In order to find an answer to the first question one has to simply look into the statute book. The provisions of Section 151 of the [Electricity Act, 2003](#) is set out here in below:

151. Cognizance of offences. -- No Court shall take cognizance of an offense punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electricity Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose.

5. From a plain reading of the aforesaid provision of law it is crystal clear that no Court can take cognizance of an offence punishable under the [Electricity Act, 2003](#), except upon a complaint made in writing by a person or an authority as provided for in the said section itself. In this regard, learned Advocate appearing on behalf

of the petitioner has drawn my attention to a Division Bench judgment of this Hon'ble Court reported in 2006(1) C Cr. LR (Cal) 334 (Ranjit Kumar Bag v. State of West Bengal) wherein it has been inter alia held that the [Electricity Act, 2003](#) prohibits the Court from taking cognizance of an offence punishable under the said Act, except upon a complaint made by specified authorities. This being the position in law, I do not find any justification as to how the learned Magistrate took cognizance of an offence under the [Electricity Act, 2003](#) on the basis of a chargesheet/final report submitted by a police officer under the provisions of Section 173 of the Criminal Procedure Code, as will appear from the order dated 9th February, 2005 passed by the learned Magistrate. The said order dated 9.2.05 is annexed to the supplementary affidavit filed by the petitioner.

6. The other question that comes up for consideration is whether an offence under Section 379 of the Indian Penal Code would lie for theft of electricity, when for the self-same offence a person is charged under Section 135 of the [Electricity Act, 2003](#), which is a special statute. To my mind the answer is, No. The reason is, since a special statute specifically provides for penalties for a particular offence, in this case -- theft of electricity, the general law, being the Indian Penal Code, attracting penalties for the same offence, will not be applicable. My view is fortified by a judgment of the Punjab and Haryana High Court in the case of Mahalakshmi Spinners Ltd. and Ors. v. State of Haryana and Anr. reported in 2007 Cr. LJ 429. In the said judgment the Court has inter alia held as follows:

When there is a specific/special law covering the question of theft of electricity i.e. Section 135 of the Act, the general law contained in Section 379, IPC will not be applicable. Any attempt by the notice to add offence under Section 379 IPC will be a crude device by the prosecution to overcome the likely objection from the accused about the filing of the complaint instead of registration of FIR. Law is well-settled that special law will prevail over the general law. Once there is a specific provision in the Act in respect of providing of punishment for theft of electricity, no offence under Section 379, IPC could be alleged by the prosecution or later on added during the investigation so as to preempt the taking of plea by the accused that no prosecution for the offence under Section 135 of the Act could be launched except upon a complaint by the authorized officer.

7. That apart, the [Electricity Act, 2003](#), which is a special statute, is a latter piece of legislation, than the Indian Penal Code, 1860, and therefore, it can be safely assumed that the legislature in its wisdom, after considering the general provision of offence of theft under the Indian Penal Code, decided to bring in the specific provision for offence of theft of electricity under the provision of Section 135 of the [Electricity Act, 2003](#). Therefore, once a person is said to have committed an alleged offence of theft of electricity, no case under Section 379 of the Indian Penal Code, 1860 would lie in view of the specific provision of law contained in the [Electricity Act, 2003](#) in this regard.

8. In the circumstances, only for the reasons stated above, this application is allowed and the proceedings before the learned Magistrate stands quashed.

9. The application is disposed of accordingly.

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