

**Subhash Chatterjee Vs. State of West Bengal and anr.**

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**Court :** Kolkata

**Decided On :** Aug-07-2007

**Reported in :** 2007(4)CHN1040

**Judge :** Sankar Prasad Mitra, J.

**Acts :** [Electricity Act, 2003](#) - Sections 135 to 140, 150, 151, 151A, 151B, 152, 153, 154 and 155; ;Electricity (Amendment) Act, 2007; ;Andhra Pradesh Electricity Act; ;Income Tax Act - Section 27; ;Evidence Act - Section 113A; ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 173; ;[Constitution of India](#) - Article 20(1)

**Appeal No. :** C.R.R. No. 4039 of 2006

**Appellant :** Subhash Chatterjee

**Respondent :** State of West Bengal and anr.

**Advocate for Def. :** Joymallya Bagchi, ;J.N. Chatterjee and ;Sourav Bhagnt, Advs. for O.P. No. 2 and ;R.K. Ghosal, Adv. for O.P. No. 1

**Advocate for Pet/Ap. :** Arup Chandra Chatterjee and ;Mahadeb Khan, Advs.

**Judgement :**

**Sankar Prasad Mitra, J.**

1. Heard the learned Advocates appearing for the parties.

2. In this application the petitioners pray for quashing of proceeding pending before the learned Judge, 3rd Special Court, Bankura, in connection with Bankura Police Station Case No. 201 of 2006 dated 31.8.2006 under Sections 135(1)(a)(b) and (c) of the Electricity Act, corresponding to G. R. Case No. 571 of 2006 on the ground that no Court can take cognizance of an offence under [Electricity Act, 2003](#) on the basis of a complaint lodged by police officer or on the basis of a police report.

3. Mr. Chatterjee, learned Advocate for the petitioners drawing my attention to Section 151 of the [Electricity Act, 2003](#) submits that in connection with the case, Chargesheet No. 244 of 2006 was submitted before the learned Judge, 3rd Special Court, Bankura on 30.9.2006 under Sections 135(1)(a)(b) and (c) of the [Electricity Act, 2003](#) whereupon on 12.10.2006 the learned Judge, Bankura took cognizance of an offence. It is submitted by Mr. Chatterjee that in view of Section 151 of the [Electricity Act, 2003](#) no Court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by appropriate Government or appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose.

4. Mr. Chatterjee drawing my attention also to the notification issued by the Ministry of Law and Justice (Legislative Deptt.) submitted that provisos to Section 151 of the [Electricity Act, 2003](#) as amended vide the Electricity (Amendment) Act, 2007 No. 26 of 2007 became effective on and from 15.6.2007 by virtue of a notification No. S. 0950(E), New Delhi, dated 12.6.2007 issued by Ministry of Power, and, therefore, by such amendment which has no retrospective effect, cannot take away the right of the accused (petitioner) which was endowed to them under Section 151 of the [Electricity Act, 2003](#) in respect of an offence which was committed prior to such amendment. Mr. Chatterjee drawing my attention to the decision reported in 2006(1 C Cr. LR Cal 334 (Ranjit Kr. Bag, Additional District and Sessions Judge-cum-Special Court under the [Electricity Act, 2003](#), Tamluk, Purba Midnapore v. State of West Bengal) submits that the said decision was delivered on the basis of reference made to it by the concerned Court and it has been observed by the Division Bench of this Court that [Electricity Act, 2003](#)

prohibits the Court from taking cognizance of an offence under the said Act except upon a complaint made by a specified authorities but it does not impose any restriction in the matter of investigation by police authority. The Division Bench further observed that commencement of investigation and power of taking cognizance are separate and distinct Act. Mr. Chatterjee further submits that in view of the said decision a Special Court cannot take cognizance of an offence under Section 151 of the [Electricity Act, 2003](#) on the basis of a police report submitted under Section 173 of Cr. PC. Therefore, the subsequent amendment empowering Special Court to take cognizance of offence under the Act on the basis of a police report submitted under Section 173 of the Code of Criminal Procedure cannot have any retrospective effect because in that case police will arrest an offender by virtue of amendment so made which has become cognizable and non-bailable. Mr. Chatterjee therefore submits that in order to save public from harassment it should not be deemed that the amendment has retrospective effect in its operation. Mr. Chatterjee drawing my attention to a decision reported in 2005 SCC (Cri) 1681 (Transmission Corporation of Andhra Pradesh v. C.H. Provakar) submits that amendment of Andhra Pradesh Electricity Act virtually took away the Constitutional right guaranteed under Article 20(1) because the said Act introduced harsh procedure and enhanced the punishment taking away the right of appeal etc. and therefore, the Apex Court held the said Act is violative of Constitutional guarantee. Mr. Chatterjee therefore submits that in the circumstances the principles enunciated by the Apex Court should be accepted and the amendment introduced by the Electricity (Amendment) Act, 2007, No. 26 of 2007 which came into force on and from 15th June, 2007 should be held to have no retrospective effect and therefore it should be held by this Court that the cognizance taken of the case by the Judge, 3rd Special Court on the basis of a police report when he was not empowered to do so should be quashed and the amendment introduced cannot have retrospective effect to cure the defect. He, therefore, submits that in the circumstances, cognizance taken of the case by the learned Judge, 3rd Special Court, Bankura should be held invalid and the proceeding pending in the Court below against the petitioners, be quashed in the interest of justice.

5. Mr. R. K. Ghosal, learned Advocate appearing on behalf of the State (O.P. No. I) also drawing my attention to Section 151 of the [Electricity Act, 2003](#) and subsequent enactment of the Electricity (Amendment) Act, 2007 which became effective from 15.6.2007, submits that since the amendment of Section 151 of the principal Act, has no retrospective effect and since the offence was committed prior to coming into the operation of the Amendment Act, the Court at that point of time had no power to take cognizance of an offence on the basis of a police report filed under Section 173 of the Code of Criminal Procedure, 1973.

6. Mr. Joymallya Bagchi, learned Advocate for the opposite party No. 2, highlighting the object of enactment of the [Electricity Act, 2003](#), Act No. 36 of 2003, submits that the whole scheme of the Act is to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity as also protecting the interest of the consumers etc. However, with the passage of time some difficulties cropped up due to divergent views expressed by different Courts, i.e. (Calcutta High Court and Haryana High Court) with regard to taking cognizance by a Court under Section 151 of the [Electricity Act, 2003](#) which did not empower a Court to take cognizance of the offence on the basis of a police report submitted under Section 173 of the Code of Criminal Procedure, 1973. It is submitted by Mr. Bagchi that the offence under this Act is cognizable and therefore the police can investigate the case independently as they are authorized to do so under the Code of Criminal Procedure. But a bar has been imposed upon Court by the principal Act under Section 151 which indirectly debars a Court from taking cognizance on the basis of a police report submitted under Section 173 of Cr. PC. Now in order to cure this defect the said Act was amended by a notification issued by the Ministry of Law and Justice and it is the Electricity (Amendment) Act, 2007 No. 26 of 2007, which was notified in the Official Gazette became effective from 15th June, 2007. Mr. Bagchi further submits that the amendment so made relates to procedure empowering a Court under Section 151 of the Electricity Act, to take cognizance even on a police report submitted under Section 173 of the Code of Criminal Procedure, 1973. The amendment also empowered Special Court to take cognizance of an offence without the accused being committed to it for trial and further the amendment introduced Sections 151A and 151B recognizing the power of a police officer to investigate an offence punishable under the Act and made the

offences under Sections 135 to 140 and Section 150 of the Act as cognizable and non-bailable. Mr. Bagchi further submits that only Judge, Special Court, constituted under Section 153 of the Act, is competent to try offences committed under this Act and the procedure to be followed has been described under Section 154 of the Act and Section 155 of the Act conveys the power of the Court of Sessions to Special Court. It is also submitted that the amendment so made relates only to procedure and it is explanatory and curative in nature and, therefore, it shall be deemed to have retrospective effect. In this connection he relies upon a decision reported in : AIR 2004 SC5100 , Zile Singh v. State of Haryana and Ors. Mr. Bagchi referring to page 397 of Craies on Statute Law submits that the amendment of procedure which is explanatory and clarifying must be retrospective in its effect.

7. Learned Advocate, Mr. Bagchi referring to : [1997]226ITR625(SC) , Commissioner of Income Tax, Bombay and Ors. v. Poddar Cement Private Limited and Ors., submits that Section 27 of the Income-tax Act which came into force on and from 1.04.1989 was considered by Apex Court to be retrospective in nature because the said amendment was sought to protect the interest of the assesseees. Mr. Bagchi further referring to a decision reported in : 1990 CriLJ562 Surbactor Singh v. Satpal and Ors., submitted that by amendment of Evidence Act, Section 113A was introduced to shift the burden of proof to the accused where a married woman commits suicide. This section speaks about presumption to be drawn in such a case and therefore it has retrospective effect. In : AIR 2006 SC351 (U.O.I. and Anr. v. Major Bahadur Singh) the Apex Court held that amendment of procedure has retrospective effect and this has been highlighted by Mr. Bagchi and ultimately he submits that the amendment of section referred to above introduced by the Electricity (Amendment) Act, 2007, (No. 26 of 2007) is only amendment of procedure and therefore it must have retrospective effect which authorized a Court even to take cognizance of the offence on the basis of a report submitted by a police officer under Section 173 of Cr. PC and it is applicable to pending cases. Therefore the contention raised by the learned Advocate for the petitioner should not be accepted by this Court and the proceedings cannot be quashed simply on the ground that the Court below took cognizance of the offence on the basis of a police report, when the Court was not empowered to do so under

the [Electricity Act, 2003](#). Therefore, the application filed by the petitioners should be dismissed by this Court with necessary direction upon the learned Judge, 3rd Special Court, Bankura to proceed with the trial expeditiously.

8. I have heard the submissions made by the learned Advocates of both 'sides and perused the decisions cited in connection with the case including the [Electricity Act, 2003](#) which was subsequently amended by the Electricity (Amendment) Act, 2007 (No. 26 of 2007) and the documents annexed with the application. Before I proceed to decide the merit of the application it should be kept in mind the object of enactment of [Electricity Act, 2003](#) and the necessity of subsequent amendment by introduction of the Electricity (Amendment) Act, 2007 (No. 26 of 2007). In the instant case, chargesheet was submitted by police after completion of investigation under Section 173 of Cr.PC, whereupon the learned Judge, 3rd Special Court took cognizance of the offence. I have gone through Section 151 of the [Electricity Act, 2003](#) which existed prior to amendment and also the Amendment Act 26 of 2007 which came into operation on and from 15th June, 2007. By such amendment Sections 151A and 151B were introduced. That apart, the proviso to Section 151 of the [Electricity Act, 2003](#) as amended empowered the Court to take cognizance of an offence punishable under the Act upon a report of the police officer filed under Section 173 of the Cr. PC, 1973. The provisos to Section 151 of Electricity Act as amended also empowered Special Court to take cognizance of an offence without the accused being committed to it for trial.

9. The question is whether the Amendment Act relates to procedure and 'curative in nature having retrospective effect or not. Under the old Act, i.e. the [Electricity Act, 2003](#), Section 151 which relates to procedure speaks about cognizance of offence to be taken by the Court upon a complaint in writing made by appropriate Government or appropriate commission or any of their officer authorized by them or a Chief Electrical Inspector or a Electrical Inspector or licensee or generating company, as the case may be for this purpose. Section 152 of the old Act, which relates to procedure speaks about compounding of offences by the appropriate Government or any officer authorized by it in this behalf. Section 153 which relates to procedure of the said Act prescribes constitution of Special Courts by the State Government. Section 154 of the old Act, which relates to procedure defines the

procedure to be adopted and power of the Special Court to deal with the offences under the Act during the course of trial. Section 155 of the old Act, defines the status of Special Court to have powers of Court of Sessions. The old Act i.e. [Electricity Act, 2003](#) never debarred a police officer to investigate a case which discloses cognizable offence but it imposed a restriction upon Court under Section 151 of the said Act in the matter of taking cognizance. However, since there was omission, the legislature in its wisdom thought it necessary to curate or clarify the defect by introducing the Amendment Act i.e. Electricity (Amendment) Act, 2007. No. 26 of 2007 and accordingly introduced provisos to Section 151 of the principal Act. The amendment so made runs as follows:

In Section 151 of the principal Act, the following provisos shall be inserted, namely.

Provided that the Court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under Section 173 of the Cr. PC 1973:

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

10. The decision reported in 2006(1) C. Cr. LE 634 (supra) cannot applied in this case because the said decision was delivered on 3rd May, 2005 when the Amendment Act was not in existence. That apart, the decision cited by he learned Advocate for the petitioners reported in 2005 SCC (Criminal) 1681 (supra) cannot also be applied in this case because the facts and circumstances considered by the Apex Court were different. In the said decision substantial right of accused was curtailed which the Apex Court did not allow to continue as it was violative of the guarantee enshrined in Article 20(1) of the [Constitution of India](#). Therefore the decision cited by the learned Advocate for the petitioner have no manner of application in the present case. On the contrary, the introduction of provisos to Section 151 by the Electricity (Amendment) Act 2007 relate to amendment of procedure which is clarifying and curative in nature and, therefore, it should be deemed to have retrospective effect and it is applicable to pending cases.



Therefore, these provisos relate to amendment of the procedure; which is clarifying and curative in nature and thus, it should be deemed to have retrospective effect and it is applicable to pending cases.

The old Act as authorized a Judge, Special Court to take cognizance of the offence and try the case in connection with the offence punishable under Sections 135 to 140 and Section 150 of the Act. That apart the old Act i.e. [Electricity Act, 2003](#) did not convey any vested right to the accused because it is a restriction imposed upon Court to take cognizance of offence. That apart, the amendment of procedure which relates to Section 151 of the principal Act is not prejudicial to the interest of any accused and in this case, there is nothing to show that the accused has been prejudiced in any manner whatsoever. It is only the Special Court which can take cognizance of an offence under the Act and try the case. Since the amendment of the principal Act by virtue of introduction of the Electricity (Amendment) Act, 2007, No. 26 of 2007 is curative and clarifying in nature and since it relates to procedural amendment it must be deemed to have retrospective effect. It is true, that the learned Judge, 3rd Special Court, Bankura, who took the cognizance of the offence was not then empowered to do so but, at the same time, that cannot change the complexion of the case because it is for the Special Court to take cognizance of the offence and try the case in respect of the offences punishable under Sections 135 to 140 and Section 150 of the Act.

11. Since the amendment of the Act so made has retrospective effect, the cognizance taken of the offence by the learned Judge, 3rd Special Court, Bankura on the basis of a police report submitted under Section 173 of Cr. PC in my view is valid and he is directed to try the case expeditiously in accordance with law. The revisional application, therefore, fails and it is accordingly disposed of.