

HIGH COURT OF CALCUTTA**Bench : Hon'ble Justice Ananya Bandyopadhyay****Date of Decision: May 6, 2024.**

C.R.R. 1680 of 2011

Sri Amiya Ranjan Sasmal Petitioner**-Vs-****The State of West Bengal & Anr.Respondent****Legislation:**

Section 135(1)(b) & (c) of the Electricity Act, 2003 with amendment Act, 2007
Section 482 Cr.P.C.

Subject:

Revision petition for quashing of proceedings under the Electricity Act regarding alleged electricity theft by tampering meter at petitioner's rented premises, now operating as a nursing home.

Headnotes:

Revisional Application for Quashing – Petitioner, owner of premises rented to a nursing home, charged under Section 135(1)(b)&(c) of the Electricity Act for alleged electricity theft through meter tampering – High Court dismisses application, emphasizing trial to ascertain veracity of allegations – Highlights petitioner's continued role as consumer for meter despite not being the direct user – Application dismissed on grounds that material issues demand resolution at trial.

Tenancy and Liability – Petitioner argues non-possession and non-use of electricity at the time of alleged theft, placing responsibility on tenant – High Court underlines that determination of actual user and intent requires evidential trial, not summary determination under Section 482 of Cr.P.C. – Application for quashing based on ownership versus possession not accepted at preliminary stage.

Role of Court under Section 482 Cr.P.C. – Emphasized limited interference at the stage of revision/application for quashing – Necessity for trial highlighted to probe deep into allegations and evidence.

Decision: Dismissal of Revisional Application – High Court declines to quash proceedings, mandates continuation of trial to probe allegations of electricity theft – Acknowledges need for comprehensive evidence assessment beyond mere allegations and petitioner’s claims.

Referred Cases:

Not specifically cited in the provided content.

Representing Advocates:

For the Petitioner: Mr. Arindam Jana, Mr. P. P. Sinha

For the State: Mr. Madhu Sudan Sur, Mr. Manoranjan Mahata

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner for quashing of the proceeding being S.C.(E) No. 24(11)10 giving rise to G.R. No. 603/10 arising out of Tamluk Police Station Case No. 149/10 dated 29.04.2010 under Section 135(1)(b) & (c) of the Electricity Act, 2003 with amendment Act, 2007 and the same was pending before the Court of the Learned Judge, Special Court of Electricity Act, Purba Medinipur at Tamluk.
2. The prosecution case emanated on the basis of a complaint lodged by one Amiya Kumar Adak, Divisional Engineer, S & L P Unit, Tamluk (D) Circle, WBSEDCL, P.O. – Tamluk, Dist – Purba Medinipur with the Officer-in-Charge, Tamluk Police Station, inter alia, stating that on 29.04.2010 at about 14:15 hours, he along with the other members of Tamluk Group Electric Supply entered into the Nursing Home premises of Sri Amiya Ranjan Sasmal being

- the said Consumer No. A011317 situated at Village – Daharpur, P.S. – Tamluk, Dist – Purba Medinipur and inspected his service connection and commercial meter being Meter No. SA002237. During inspection it was found that the above noted consumer was consuming power dishonestly by tampering the polyphaser meter. It was found that both side paper seal were in tempered condition and void mark on the paper seal. Terminal voltage on “B” phase with meter display not matching and meter display found was “Zero” Voltage. One “B” phase meter was opened at site for further inspection. Internal inspection revealed that Blue voltage link detached purposely after opening the meter and discontinued the voltage to meter internal printed circuit board to get wrongful benefit of the consumer causing loss to the WBSEDCL’s revenue. As theft of electricity was detected during inspection of the tampered meter and the poly carbonate seals were seized in presence of the witnesses namely (1) Gopal Chandra Jana and (2) Debendra Nath Santra, both of Tamluk Group Electric Supply and their signatures obtained on the seizure list. From the official record it revealed that electric was installed by meter the consumer for operating a hotel. After certain years he converted the hotel into Nursing Home without taking any permission from the licensee. The inspection team left the aforesaid premises after disconnecting the service line at 15:15 hours on 29.04.2010. It was detected that accused Amiya Ranjan Sasmal committed an offence under Section 135(1)(b) & (c) of the Electricity Act, 2003 read with Amendment Act, 2007. The complainant prayed to the officer-in-charge, Tamluk Police Station to take cognizance of the complaint and treat the same as F.I.R.
3. Based on the aforesaid complaint, Tamluk Police Station Case No. 149/10 dated 29.04.2010 under Section 135(1)(b)&(c) of the Electricity Act, 2003 was instituted.
 4. The F.I.R. and other records reflected the name of the petitioner as the sole accused person being a consumer to have allegedly committed the said offence.
 5. On completion of the investigation, the charge-sheet was filed being chargesheet no. 137/10 dated 27.05.2010 under Section 135(1)(b)&(c) of the Electricity Act, 2003 against the petitioner.
 6. The Assistant Engineer & Station Manager, Tamluk Group Electric Supply issued final Bill on 26.05.2010 to the petitioner for a sum of Rs.5,56,379/- mentioning due date of payment 12.05.2010.
 7. The petitioner contended as follows:-

- i. It was fact that the petitioner was the true and lawful owner of the said building/premises being holding on 0460, Ward No. 13 of Tamluk Municipality wherein the electricity connection in question was installed. Initially there was hotel business carried on by the petitioner. Due to financial stringencies he was unable to continue with the said business and ultimately he let out the said building/premises on rent to the Park Clinic and Nursing Home, a partnership firm by virtue of a tenancy agreement executed on 27.11.2008 by and between the petitioner and the said partnership firm i.e. Park Clinic and Nursing Home was represented by its partners. The possession of the 1st floor of the said building/premises was made over to the said tenant on and from 15.02.2009 and the rest floors were handed over i.e. Ground Floor, 2nd Floor and 3rd Floor on 05.03.2009.
- ii. In terms of the aforesaid tenancy agreement, the tenant was allowed to use electrical equipment's, fittings and installation and to consume electric connection at its own cost and risk, until new connection was available to the tenant. The existing electric connection would be used by the tenant on payment of all electric bills. Accordingly the tenant was utilising the electric installations and consuming the electricity since the date of possessing the said building/premises (i.e. since 15.02.2009) and at the material point of inspection conducted by the complainant/O.P. No. 2, the tenant was the occupier, possessor and user of the said electricity.
- iii. The final bill raised on 26.05.2010 by the Assistant Engineer and Station Manager, Tamluk Group Electric Supply, revealed that the consumption/assessment period was May, 2009 to April 2010 when the tenant only consumed said electricity.
- iv. The complainant conducted the aforesaid inspection on 29.04.2010 in absence of the petitioner and no intimation was ever given to him prior to and/or during the said inspection and seizure of the articles from the said building.
- v. Petitioner stated that a lot of complaints have been instituted under Section 135(1)(b)&(c) of the Electricity Act by the same and identical complainant against the users of the electricity. However, in the instant case the said complainant had lodged the complaint against the petitioner who has not used/consumed the electricity nor was he in possession of the said building/premises during the period of theft as alleged. There were several electricity cases pending before the same court of law and the present case was quite different in comparison to the other cases.

- i. Learned Advocate for the petitioner submitted that – At the outset it was put on record that the petitioner let out his said building / premises on rent to the tenant, named Park Clinic & Nursing Home, represented by its partners and since the partners of the said firm had been occupying and possessing the said building / premises on and from 15-02-2009 and consumed electricity using the said meter and it revealed from the contents of complaint, report of inspection, seizure list, F. 1. R. and the final bill that the consumption of electricity alleged to have been theft was for the period from May, 2009 to April, 2010. As such the complaint and F.I.R. against the petitioner was an outcome of malice and the proceedings being S.C.(E) No.24(11)10 against the petitioner was liable to be quashed.
- ii. Considerable number of Electricity Cases were pending before the same court of law and the present case was quite different in comparison to the other cases and the same was not realised by the Learned Judge and as such the entire case was liable to be quashed.
- iii. The Learned Judge did not apply his mind in the charge sheet which was improper and defective and there was not mentioned who was the user and as such the proceeding is liable to be quashed.
- iv. A lot of complaints had been made under Section 135(1)(b) & (c) of the Electricity Act by the same and identical complainant against the users of the electricity. In the instant case the said complainant had lodged complaint against the petitioner who had neither used/ consumed the electricity nor he had been in possession of the said building / premises during the period of theft as alleged. There were several electricity cases pending before the same court of law and the present case was quite different in comparison to the other cases and the same was not realised by the Learned Judge and as such the said proceedings against the petitioner was liable to quashed.
- v. The complainant with collusive intention and bad motive lodged the complaint out of grudge against the petitioner to save the actual user for their personal wrongful gain and as such the said proceeding against the petitioner was liable to quashed.
8. The Learned Advocate for the State submitted the contentions of the petitioner ought to be proved after adducing evidence. At this preliminary stage the proceedings shall not be quashed.
9. The petitioner stated to be the landlord of the premise in question who had entered into a tenancy agreement with a third party operating a nursing home on the tenanted premises under the ownership of the present petitioner. The petitioner accepted rent against such tenancy and at the relevant time was

not in possession of the area occupied for the purpose of functioning the nursing home. However, the petitioner continued to be the consumer of the electric meter though he contended that he was not consuming the electricity through the meter which was providing electricity exclusively to the nursing home of the tenant of the petitioner.

10. In discharging its power under Section 482 of the Cr.P.C. the High Court cannot act as a Trial Court and rely on the documents annexed by the petitioner which are not unimpeachable in nature. The contentions of the petitioner are required to be proved after adducing both oral and documentary evidence.
11. There are prima facie allegations which demand the test of its veracity through trial.
12. Under such circumstances, the instant criminal revisional application is dismissed.
13. There is no order as to costs.
14. Let the copy of this judgment be sent to the learned trial court as well as the police station concerned for necessary information and compliance.
15. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

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