

Assistant Electrical Engineer

v.

Satyendra Rai & Another

(Supreme Court Of India)

HON'BLE MR. JUSTICE V.S. SIRPURKAR HON'BLE MR. JUSTICE T.S. THAKUR

Assistant Electrical Engineer v. Satyendra Rai & Another

Criminal Appeal No. 2133 Of 2010 | 11-11-2010

Leave granted. The challenge in this appeal is to the order dated 28-5-2009 passed by the High Court of Judicature of Patna in Satyendra Rai v. State of Bihar (Criminal Misc. No. 19178 of 2007, order dated 28-5-2009 (Pat) whereby the High Court has quashed First Information Report No. 18 of 2007.

2. The brief facts of this case are that on 24-1-2007 at about 12.30 p.m., a raiding party led by Vijay Kumar Singh, Assistant Electrical Engineer conducted a surprise raid in the premises of the rice mill of Respondent 1 in Village Dariyapur under Naubatpur Police Station and found a 5 HP motor running directly with electrical energy extracted from the main supply line illegally by attaching a hook. Thereafter, the Assistant Electrical Engineer, Naubatpur filed a complaint before the police on the same day with regard to the theft of electricity being committed by Respondent 1 and on the basis of the said complaint, a first information report was registered bearing Naubatpur PS Case No. 18 of 2007 for the offences punishable under Sections 39/44 of the Electricity Act, 1910.

It is an admitted position that at that time when the complaint was filed, the Electricity Act, 2003 (hereinafter referred to as "the Act") had already come into force. However, the complaint seems to have been filed under the old Act i.e. the Electricity Act, 1910. Respondent 1, therefore, moved the High Court for quashing of the FIR particularly on the ground that under Section 151 of the Act, only a private complaint could be filed and no police case was maintainable.

Section 151 of the Act on the date of complaint was as under:

"151. Cognizance of offences. – No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by the appropriate Government or appropriate Commission or any of their officers authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company....."

Though the report was made by the Assistant Electrical Engineer, it was pointed out before the High Court that even if the police had decided to file a report under Section 173 CrPC complaining the theft, the Court could not have taken cognizance as provided under Section 151 of the Act and only a complaint should have been filed in writing by the appropriate Government or their officers. The

High Court accepted this contention and held that the very inception of the case was not in accordance with law and, therefore, the first information report in the present case could not be sustained. This is the judgment which has fallen for our consideration.

We have heard the learned counsel appearing for the parties and gone through the appeal.

7. Considering the position in law, it is obvious that the High Court has completely misconstrued the relevant provision. Considering the definition of “theft” of electricity in Section 135 of the Act, there could be no difficulty that in the first information report, the theft as contemplated in Section 135 of the Act was reported. The only question is as to whether the police could have investigated on that basis and could have filed a charge-sheet against Respondent 1-accused, particularly in view of the language of Section 151 of the Act.

Mr. Mohit Kumar Shah, learned counsel appearing for the appellant invites our attention to the present Section 151 of the Act and more particularly to the proviso which has been added by way of an amendment. This proviso came by way of Act 26 of 2007 and reads as under:

“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 Code of Criminal Procedure, 1973 (2 of 1974):

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.”

Therefore, ordinarily, there is no difficulty now in the way of the police to investigate as also to prosecute the accused if it is found that the accused has committed the offence. However, this proviso seems to have come only w.e.f. 15-6-2007, whereas the offence complained of in the present case is stated to have taken place on 24-1-2007. Therefore, it is argued by the learned counsel for the respondent that the proviso could apply only if the offence is committed and report after 15-6-2007.

We, however, do not agree as the learned counsel appearing for the appellant has also pointed out and invited our attention to the Statement of Objects and Reasons of the Act by which the amendment has come and further by which the proviso is added. Para 4 of the Statement of Objects and Reasons reads as under:

“4. As per the provisions contained in Section 151 of the Act, the offences relating to theft of electricity, electric lines and interference with metres are cognizable offences. Concerns have been expressed that the present formulation of Section 151 stands as a barrier to investigation of these cognizable offences by the police. It is proposed to amend Section 151 so as to clarify the position

that the police would be able to investigate the cognizable offences under the Act. To expedite the trial before the Special Courts, it is also proposed to provide that a Special Court shall be competent to take cognizance of an offence without accused being committed to it for trial.”

(emphasis supplied)

Therefore, considering the language of Para 4 of the Statement of Objects and Reasons, it is clear that the amendment brought in is clarificatory in nature and as such it would take into its ambit even the pending matters and in that sense it would be retrospective amendment.

There is one more reason why the High Court’s order (Satyendra Rai vs. State of Bihar, Criminal Misc. No. 19178 of 2007, order dated 28-5-2009 (Pat) can be faulted. The High Court has clearly ignored the First Schedule of CrPC and more particularly the second part thereof which is under the head “Classification of offences against other laws”. The second entry reads as follows:

“If punishable with imprisonment for three years and upward but not more than seven years, then such offences are held to be cognizable, non-bailable and triable by the Court of the Magistrate of the First Class.”

Therefore, the High Court ought to have considered this provision which makes the first information report acceptable by the police in the sense that the police could investigate into the matter and if found guilty could have also filed a report under Section 173 CrPC before the court on which the court could have taken the cognizance of the offence.

Be that as it may, since the High Court has not considered both these provisions, we set aside the impugned order (supra) of the High Court holding that the first information report filed in the present case was liable to be investigated and a police report on that basis can be entertained by the criminal court by taking cognizance of the same.

In that view, we allow this appeal and dismiss the petition filed before the High Court by Respondent 1 under Section 482 CrPC.

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