

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3736 of 2014

**West Bengal State Electricity Distribution Company Limited
-Vs-
The State of West Bengal**

For the Petitioner : Mr. Aniket Mitra

For the State : Mr. Narayan Prasad Agarwal
Mr. Pratick Bose

Heard on :07.06.2023

Judgment on :27.09.2023

Ananya Bandyopadhyay, J.:-

1. The instant criminal revisional application is filed by the petitioner being aggrieved and dissatisfied with the Order No. 41 dated 29.10.2014 passed by the Learned Judge, Electricity Act, Hoogly-cum- Additional District & Sessions Judge, 3rd Court, Hoogly in Electricity Case No. 04 of 2014 directing the accused persons to pay Rs. 20,000/- to the electricity authority for compounding the offence.
2. The petitioner company is a non profit making enterprise of the Government of West Bengal and acts as a licensee under the Electricity Act, 2003 by

catering public utility services through the distribution of electricity in the State of West Bengal.

3. Dhaniakhali Police Station Case No. 58 of 2008 dated 21.08.2008 was instituted on the basis of a petition of complaint lodged by Sri Gautam Das, the then Station Manager, Dhaniakhali Group Electricity Supply with the Officer-in-Charge of Dhaniakhali Group Electric Supply therein alleging commission of offence under Section 135(1)(a) of the Electricity Act by one Ardhendu Bikas Ghosh and Amalendu Prakash Ghosh.
4. The allegations made in the complaint brief is to the effect that on 21.08.2008 the de-facto complainant and his inspection team inspected the premises of Sri Ardhendu Bikas Ghosh and Sri Amalendu Prakash Ghosh and in the course of search of the said premises in the presence of the accused persons found electrical appliances have been dishonestly used by the accused by means of hooking arrangement through cable from the overhead line of WBSEDCL thereby committing theft of electricity.
5. The Learned Advocate for petitioner stated that hooking devices were seized under proper seizure list and thereafter a Provisional Assessment was made and a Provisional Bill was raised by the WBSEDCL calculating the pilferage at Rs.47,023/- taking into consideration the relevant provision and subsequent norms.
6. It was further submitted by the Learned Advocate for petitioner that subsequently a Final Assessment was made by WBSEDCL and a Final Bill was raised by the authorities in respect of the same amount. The Final Bill

was served upon the accused persons namely Sri Ardhendu Bikas Ghosh and Sri Amalendu Prakash Ghosh. Both of them paid the amount at Dhaniakhali CCC and admitted their guilt and applied for compounding of the offences as mentioned in the FIR.

7. It was stated by the Learned Advocate for the petitioner on receipt of the application for compounding, the Zonal Manager & Compounding Authority, Burdwan Zone, WBSEDCL passed an order compounding the offence by directing the accused person to deposit Rs.30,000/- towards compounding the offence. It was further ordered that upon payment of the said amount, no further proceedings shall continue against them.
8. The Learned Advocate for petitioner stated that the Learned Judge, Electricity Act, Hoogly-cum-Additional District & Sessions Judge, 3rd Court, Hoogly after hearing the parties and after hearing the Zonal Manager & Compounding Authority, Burdwan Zone, WBSEDCL was pleased to pass an order directing the accused persons to pay Rs.20,000/- to the electricity authorities for compounding the offence, disregarding that the compounding authority had fixed the quantum at Rs.30,000/- mechanically directed the Zonal Manager-cum-Compounding Authority, Burdwan Zone, WBSEDCL to accept a sum of Rs.20,000/- and compound the offence thereby causing grave injustice to the petitioner.
9. It was further stated that the Learned Judge should have considered that the accused persons used the domestic meter for commercial purpose of the poultry farm and therefore the order passed by the Learned Judge fixing the

amount of compounding at Rs. 20,000/- without assigning any cogent reasons was arbitrary and bad in law.

10. The Learned Advocate for the petitioner stated that the Learned Judge before fixing the quantum of compounding charge at Rs.20,000/- failed to appreciate that the calculation had been arrived at by the Zonal Manager-cum-Compounding Authority, Burdwan Zone, WBSEDCL on the basis of the guidelines laid down in Section 152 of the Electricity Act and Rules framed thereunder and therefore the impugned order was liable to be quashed.
11. The complaint lodged by the Station Manager, Dhaniakhali Group Electric Supply, WBSEDCL dated 21.08.08 before the Officer-in-Charge, Dhaniakhali Police Station, Hooghly did not specifically mention the usage of domestic meter for commercial purpose in the poultry farm. The dishonest objective in the commission of the offence was not specifically mentioned in the “Provisional assessment bill on account of theft of energy detected during raid conducted on 21.08.2008” raised to the fine of Rs. 47,023/- against the Dhaniakhali P.S. Case No. 58/2008.
12. The order for compounding dated 17.09.14 passed by the Zonal Manager & Compounding Authority, Burdwan Zone, WBSEDCL, inter alia stated –

“Perused the relevant documents including FIR, Inspection Report and Receipt of Payment against provisional/final bill and application for compound of offence submitted by Ardhendu Bikash Ghosh and Amalendu Ghosh Persons/Consumers suspected to have committed offence.”

13. Mere suspicion does not ipso fact establish the guilt of the appellants in dearth of materials of probity of record.
14. The FIR as well as the contemporaneous documents did not mention the electric meter was being utilized for commercial purpose.
15. The impugned Order No. 41 dated 29.10.2014 is hereby affirmed.
13. Accordingly, the instant criminal revisional application being CRR 3736 of 2014 is disposed of.
14. There is no order as to cost.
15. 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.
16. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)