

Court No. 80

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Case :- APPLICATION U/S 482 No. - 14329 of 2021

Applicant :- Gulfam

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Shri Ram (Rawat),Giri Ram Rawat,Indra Deo Mishra

Counsel for Opposite Party :- G.A.,Pranjal Mehrotra

Hon'ble Rajeev Misra,J.

1. Heard Mr. Indra Deo Mishra, the learned counsel for applicant, the learned A.G.A. for State and Mr. Pranjal Mehrotra, the learned counsel representing opposite party-2.

2. Perused the record.

3. This application under section 482 Cr.P.C. has been filed challenging Charge-Sheet dated 02.02.2021 submitted in Case Crime No.4388 of 2020 under sections 135-1(A) Electricity Act, Police Station- Anti Power Theft Ghaziabad, District- Ghaziabad as well as entire proceedings of S.S.T. No.152 of 2021 (State Vs. Gulfam) under section 135-1(A) Electricity Act, Police Station- Anti Power Theft Ghaziabad, District- Ghaziabad arising out of aforementioned case crime number and now pending in the court of Special Judge (E.C. Act)/Additional District and Sessions Judge, Ghaziabad.

4. Record shows that in respect of an incident, which is alleged to have occurred on 26.12.2020, a delayed F.I.R. dated 28.12.2020 was lodged by first informant/opposite party-2- Umesh Kumar Gupta (Junior Engineer) and was registered as Case Crime No.4388 of 2020 under sections 135-1(A) Electricity Act, Police Station- Anti Power Theft Ghaziabad, District- Ghaziabad. In the aforesaid F.I.R., applicant- Gulfam has been nominated as solitary named accused.

5. According to the prosecution story as unfolded in the F.I.R., it is alleged that on 26.12.2020, first informant along with others conducted checking of the premises of petitioner and found that electricity theft was being

committed.

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6. Investigating Officer, thereafter proceeded with the statutory investigation of aforementioned case crime number in terms of Chapter XII Cr.P.C. During course of investigation, Investigating Officer examined various witnesses and also collected certain documents. On the basis of above, complicity of present applicant was found to be established in the crime in question by Investigating Officer. Accordingly, Investigating Officer submitted a Charge-Sheet dated 02.02.2021, whereby applicant has been charge-sheeted under section 135-1(A) Electricity Act.

7. Upon submission of aforesaid charge-sheet, cognizance was taken upon same by court concerned i.e. Special Judge (E.C. Act)/Additional District and Sessions Judge, Ghaziabad vide Cognizance Taking Order dated 05.02.2020. Aforesaid order is contained in the charge-sheet, certified copy of which has been brought on record as Annexure-3 to the affidavit filed in support of application under section 482 Cr.P.C.

8. As a result of above, S.S.T. No.152 of 2021 (State Vs. Gulfam) under section 135-1(A) Electricity Act, Police Station- Anti Power Theft Ghaziabad, District- Ghaziabad arising out of aforementioned case crime number. Subsequently, vide separate order dated 05.02.2021 passed on the order-sheet Special Judge (E.C. Act)/Additional District and Sessions Judge, Ghaziabad took cognizance and simultaneously summoned the applicant in aforementioned Special Sessions Trial.

9. Feeling aggrieved by the charge-sheet dated 02.02.2021 and entire proceedings of consequential S.S.T. No.152 of 2021 (State Vs. Gulfam) under section 135-1(A) Electricity Act, Police Station- Anti Power Theft Ghaziabad, District- Ghaziabad, now pending in the court of Special Judge (E.C. Act)/Additional District and Sessions Judge, Ghaziabad, applicant has now approached this Court by means of present application under section 482 Cr.P.C.

10. Mr. Indra Deo Mishra, learned counsel for applicant contends that applicant is innocent. He has been falsely implicated in aforementioned case crime number. Allegations made in F.I.R. are false and concocted. No theft of electricity has been committed by applicant. Investigating Officer has not conducted free and fair investigation. As such, investigation is not impartial. Investigating Officer has acted as an agent of prosecution. Resultantly, charge-sheet is tainted. Cognizance Taking Order/Summoning Order passed by court below is cryptic as same is devoid of reasons. It is also submitted that by virtue of section 193 Cr.P.C., Sessions Judge has no jurisdiction to take cognizance directly. Sessions Judge can take cognizance only after case has been committed to Court of Sessions. Therefore, Cognizance Taking Order/Summoning Order passed by court below are not only irregular but illegal. As such, entire proceedings of above-mentioned Special Sessions Trial are liable to be quashed by this Court.

11. Per contra, the learned A.G.A. and Mr. Pranjal Mehrotra, learned counsel representing opposite party-2 have jointly opposed this application.

12. Learned A.G.A. contends that after registration of F.I.R. dated 28.12.2020, Investigating Officer proceeded with statutory investigation of same in terms of Chapter XII Cr.P.C. During course of investigation, Investigating Officer examined first informant and other witnesses under section 161 Cr.P.C. On the basis of above, as well as other material collected by Investigation Officer during course of investigation which is substantially adverse to applicants, he opined to submit a charge-sheet. Accordingly, charge-sheet dated 02.02.2021 was submitted, whereby and whereunder applicant has been charge-sheeted under section- 135-1(A) Electricity Act. In the charge-sheet so submitted one prosecution witness has been nominated. As such, it cannot be said at this stage that prosecution of applicant is false or there is no material to support the prosecution case. He has then referred to paragraph- 37 of the judgment in

State of Gujarat Vs. Afroz Mohammed Hasanfatta, A.I.R. 2019 Supreme Court 2499, wherein following has been observed.

"37. For issuance of process against the accused, it has to be seen only whether there is sufficient ground for proceeding against the accused. At the stage of issuance of process, the Court is not required to weigh the evidentiary value of the materials on record. The Court must apply its mind to the allegations in the charge sheet and the evidence produced and satisfy itself that there is sufficient ground to proceed against the accused. The Court is not to examine the merits and demerits of the case and not to determine the adequacy of the evidence for holding the accused guilty. The Court is also not required to embark upon the possible defences. Likewise, 'possible defences' need not be taken into consideration at the time of issuing process unless there is an ex- facie defence such as a legal bar or if in law the accused is not liable. [Vide Nupur Talwar v. Central Bureau of Investigation and another, (2012) 11 SCC 465]"

13. Learned A.G.A. further submits that whether in the facts and circumstances of the case, charge under section 135-1(A) Electricity Act is made out or not against applicant, can be agitated by applicant before court below itself at the time of framing of charge.

14. It is lastly contended that in the absence of entire material, which was collected by Investigating Officer during course of investigation, the pleas urged for quashing of proceedings of above-mentioned criminal case, cannot be examined by this Court, in view of law laid down in **Kaptan Singh Vs. State of U.P. and Others**, 2021 SCC Online SC 580, wherein following has been observed in the last line of paragraph-25. Of the judgement:-

"The High Court has failed to notice and/or consider the material collected during the investigation."

15. Learned A.G.A. has then invited attention of Court to section 153 Electricity Act, which reads as under:-

"153. Constitution of Special Courts -

1. The State Government may, for the purposes of providing speedy trial of offences referred to in sections 135 to 140 and section 150, by notification in the Official Gazette, constitute as

many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

2. A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.

3. A person shall not be qualified for appointment as a judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.

4. Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of--

a. by a Judge, if any, exercising jurisdiction in the Special Court;

b. where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under sub-section (1).”

16. On the basis of above, learned A.G.A. submits that once offence under Electricity Act is to be tried by a Special Judge, especially designated and further such Judge should not be below the rank of Additional District and Sessions Judge, the argument raised on behalf of applicant regarding jurisdiction of Court to take cognizance in the light of section 193 Cr.P.C. is wholly misconceived. In the submission of learned A.G.A., special law shall override the general law. He has also referred to section 194 Cr.P.C. in support of above.

17. On the aforesaid premise, learned A.G.A. contends that present application is liable to be dismissed.

18. When confronted with above, learned counsel for applicant could not overcome the same.

19. Having heard learned counsel for applicant, learned A.G.A. for State,

Mr. Pranjali Mehrotra, learned counsel for opposite party-2 and upon perusal of record, this Court does not find any merit in this application. The submissions urged by learned A.G.A. could not be dislodged by learned counsel for applicant. Apart from above, by virtue of section 154 Electricity Act read with sections 193 and 194 Cr.P.C., it is explicitly clear that Special Judge (E.C. Act)/Additional District and Sessions Judge, Ghaziabad had jurisdiction in the matter to take cognizance. As such, the Cognizance Taking Order/Summoning Order dated 05.02.2021 passed by Special Judge (E.C. Act)/Additional District and Sessions Judge, Ghaziabad cannot be said to be illegal or without jurisdiction.

20. In view of above, the application fails and is liable to be dismissed.

21. It is, accordingly, dismissed.

Order Date :- 10.01.2022

Arshad