

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

Present

Mr. Justice Ashish Ranjan Das

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 22640 of 2016

IN THE MATTER OF :

An Application under Section 561A of the Code of
Criminal Procedure

-And-

IN THE MATTER OF :

Sheikh Ziaur Rahman alias Zuwel

...Accused-Petitioner

Versus

A.S.M. Mazedar Rahman and another

...Opposite Parties

Mr. Zahirul Alam Babar, Advocate

...For the Petitioner

Mr. S.M. Asraful Hoque, D.A.G with

Ms. Fatema Rashid, A.A.G

Mr. Md. Shafiquzzaman, A.A.G. and

Mr. Md. Akber Hossain, A.A.G

...For the State

Judgment on 05.03.2024

Md. Riaz Uddin Khan, J:

Rule was issued asking the opposite parties to show cause as to why the proceeding of the Complaint Case No. 45 of 2011 dated 13.06.2011 under Section 40A of the Electricity Act, 1910, now pending in the Court of the learned Senior Judicial Magistrate, Biddut Unnayan Board, Faridpur Area, Faridpur should not be quashed and/or such other or further order or orders

should not be passed as to this Court may deem fit and appropriate.

At the time of issuance of Rule all further proceedings of the Complaint Case No. 45 of 2011 was stayed initially for 6(six) months which was extended time to time.

Brief facts for disposal of this Rule is that one A.S.M. Mazedar Rahman, Assistant Engineer, West Zone Power Distribution Company Limited filed a petition of complaint against the accused-petitioner Sheikh Ziaur Rahman alias Zuwel bringing allegation under section 40A of the Electricity Act, 1910 alleging that the accused is a consumer of electricity of the area having account No. C/01 owing a taka of 91,965/- for which his electricity connection was cut off on 01.06.2000. It was further alleged that instead of paying the said amount the accused filched his electricity Miter.

On this allegation learned Additional Chief Judicial Magistrate, Faridpur took cognizance of the case under section 40A of the Electricity Act, 1910 against the accused-petitioner and issued summons. Petitioner was enlarged on bail and in course of time charge was framed against the accused-petitioner on 03.03.2014. No witness was examined till 20.03.2016 and at this stage

the petitioner moved this Court and obtained the Rule and order of stay on 25.07.2016 as stated at the very outset.

Mr. Zahirul Alam Babar, the learned Advocate appearing for the accused-petitioner submits that earlier there was a dispute regarding the payment of electricity bill with the father of the accused-petitioner and the father of the accused-petitioner by filing Civil Suit contested against the claim of the electricity authority and obtained decree. Out of that grudge the instant case has been filed. He then submits that admittedly the electricity connection was cut off on 01.06.2000 but the instant case has been filed on 13.06.2011 more than 11 years after the alleged occurrence. The petitioner paid the electricity bill with interest amounting to Tk-1,12,581.20 on 29.03.2012.

The learned Advocate finally submits that the allegation brought against the accused-petitioner in no way comes under section 40A of the Electricity Act as there is no ingredient of offence of that section.

No one appears for opposite party No. 1, the electricity authority.

Mr. Md. Akber Hossain, learned Assistant Attorney General appearing for the State submits

that the accused-petitioner stole his Miter which is an offence under section 40A of the Electricity Act, 1910 as such the Rule should be discharged.

We have heard the learned Advocate for the parties, perused the application, supplementary affidavit along with the annexures and the other materials on record available before us.

It appears from record that admittedly the electricity connection was cut off on 01.06.2000 for non-payment of electricity bill of Tk- 91,965/- and it further appears from annexure-F, a certificate issued by Janata Bank on 06.03.2016 stating that against the account No. C/01 an amount of taka 1,12,581.20 has been paid on 29.03.2012 against a bill issued by the West Zone Power Distribution Company Limited on 25.03.2012.

According to section 40A of the Electricity Act, 1910 whoever dishonestly removes, dismantles, commits theft or willfully damages any line materials such as, pole, tower, parts, conductors, transformers from an electric supply-line belonging to a licensee shall be punishable with imprisonment of either description for a term which shall not be less than three years but which may extend to five years and shall also be

liable to fine which may extend to twenty five thousand taka.

In the present case the petition of complaint has been filed long after 11 years of cut off the electricity line of the petitioner alleging that the accused-petitioner committed theft on his own electricity Miter being a licensee or consumer. There is no allegation against the accused petitioner that he dishonestly removes, dismantles, commits theft or willfully damages any line materials such as, pole, tower, parts, conductors, transformers from an electric supply-line belonging to the petitioner or any other licensee. Admittedly there was no supply line for long 11 years after it was cut off by the authority for non-payment of bill. Moreover, there is no explanation why the electricity authority did not take away the Miter for long 11 years. In the mean time, the petitioner paid the bill with interest. In that view of the matter we do not find any ingredients of offence under section 40A of the Electricity Act, 1910 against the accused petitioner. Since there is no ingredient of section 40A of the Electricity Act, 1910 against the accused-petitioner we are inclined to interfere with the instant proceeding which is liable to be quashed.

In the facts and circumstances of the case, we find substance in this Rule.

Resultantly the Rule is made **absolute**.

The proceeding of the Complaint Case No. 45 of 2011 dated 13.06.2011 under Section 40A of the Electricity Act, 1910, now pending in the Court of the learned Senior Judicial Magistrate, Biddut Unnayan Board, Court of Judicial Magistrate, Faridpur Area, Faridpur is hereby quashed.

Communicate the judgment and order at once.

Ashish Ranjan Das, J:

Ziaul Karim
Bench Officer