

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

Present

Mr. Justice Md. Iqbal Kabir

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No. 48128 of 2015

IN THE MATTER OF :

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

-And-

IN THE MATTER OF :

K.M. Hamidur Rahman

... Petitioner

Versus

**Dhaka Power Distribution Company
Ltd.(DPDC), Dhaka and the State**

...Opposite Parties

None

...For the Petitioner

Mr. Samarendra Nath Biswas with
Mr. Yadnan Rafique and
Ms. Kaniz Fatema, Advocates

....For the Opposite party No. 1

Mr. Muhammad Shah Newaj, A.A.G

...For the State

Judgment on: 22.08.2024.

Md. Riaz Uddin Khan, J:

Rule was issued calling upon the opposite parties to show cause as to why the proceedings of C.R. Case No. 190 of 2012 under section 39A/47 of the Electricity Act, 1910, now pending in the Court of Special Metropolitan Magistrate, Court No. 4, Dhaka Power Distribution Company Ltd. Dhaka 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 C.R. Case No. 190 of 2012 was stayed initially for a period of two months and lastly extended on 24.05.2018 till disposal of the Rule.

Succinct facts for disposal of this Rule are that the opposite party No. 1 as complainant filed C.R. Case No. 190 of 2012 before the Court of Special Metropolitan Magistrate, 4th Court, Dhaka of Dhaka Power Distribution Company Ltd. (DPDC) alleging that the accused-petitioner being a customer consumed electricity but did not pay the arrear electricity bill for 136 months for which on 30.06.2003 the authority cut the electricity line of the accused. Thereafter, on 21.10.2012 when the authority went to visit the house of the accused petitioner found that the petitioner was using electricity by an illegal means and the accused owe an amount of taka 68,69,229/- till March, 2007 and thus the accused committed offence under section 39A/47 of the Electricity Act, 1910.

The concerned Court took cognizance of the C.R. Case No. 190 of 2012 on 22.10.2012 and issued warrant of arrest against the accused-petitioner. The petitioner appeared before the court on 09.09.2015 and obtained bail. At this stage the petitioner moved this Court and obtained the Rule and order of stay as stated at the very outset.

No one appears to support the Rule when the matter was taken up for hearing though the matter is appearing in the list for several dates.

Mr. Samarendra Nath Biswas, the learned Advocate appearing for the opposite party No. 1 submits that the allegation made in the petition of complainant constitute offence under section 39A and also 47 of the Electricity Act, 1910 as he used electricity by illegal means and as such the ground taken by the accused-petitioner has no substance.

The learned advocate then submits that in the instant case the charge yet to be framed and it is well settled that the charge may be altered at any stage of the case and in that view, for misquotation of the section, if any, in the petition of complaint it cannot be quashed.

We have heard the learned advocate for the opposite party no.1, perused the petition of complaint and the application filed under section 561A of the Code of Criminal Procedure and the grounds taken therein and all other available materials on record.

It appears from the instant application that the accused-petitioner has taken 6(six) grounds. While the ground numbers 2, 3 and 5 is the more or less similar and other grounds has no manner of application in the given facts. In light of the ground Nos. 2, 3 and 5 the accused petitioner would submits that the allegation made in the

petition of complaint does not come under section 39A and 47 of the Electricity Act, 1910.

It would be profitable to come to a just conclusion if we see the ingredients of those sections of law. Section 39 of the Electricity Act, 1910 is reproduced here under:

39. Penalty for dishonest abstraction, etc. of energy: (1) Whoever dishonestly abstracts, consumes or uses energy shall be punishable with imprisonment of either description for a term which shall not be less than one year but which may extend to three years and shall also be liable to a fine of ten thousand taka.

Section 39A states as follows:

39A. Penalty for installation of artificial means, etc. Whoever installs or uses any device, contrivance or artificial means for dishonest abstraction, consumption or use of energy of licensee, whether he derives any benefit therefrom or not, shall be [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 thousand taka]; and if it is proved that any device, Contravance or artificial means for such abstraction, consumption or use exists or has existed on a premises, it shall be presumed, unless the contrary is proved, that such person has committed an offence under this section.

Section 47 is also reproduced below:

47. Penalty for offences not otherwise provided for :- Whoever, in any case not already provided for by sections 39 to 46 (both inclusive), makes default in complying with any of the provisions of this Act, or with any order issued under it, Or, in the case of a licensee, with any of the conditions of his 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 a fine of five thousand taka:

Provided that, where a person has made default in complying with any of the provisions of sections 13, 14, 15, 17 and 32, as the case may be, he shall not be so punishable if the Court is of opinion that the case was one of emergency and that the offender complied with the said provisions as far as was reasonable under the circumstances.

(2) A person who after being convicted under sub-section (1), is convicted for the second or subsequent times, he shall for every such second or subsequent conviction, 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 a daily fine of five hundred taka.

In the present case the question is therefore arises for consideration is whether the material on record prima facie constitutes any offence against the accused-petitioner. Is there any ingredient of criminal offence under sections 39, 39A or 47 of the Electricity Act, 1910 in the light of the allegation brought in the petition of complaint against the accused petitioner?

In the present case, the complainant alleged that the accused-petitioner being a consumer did not pay the arrear electricity bill for 136 months to the complainant for which on 30.06.2003 the authority of the complainant cut the electricity line of the accused as he failed to pay even after receiving notice. The complainant further alleged that on 21.10.2012 when the authority went to visit the house of the accused petitioner found that the petitioner was using electricity by an illegal means. So, from the above facts it cannot be said that there is no ingredients of dishonest abstraction or consumption or use of electricity as alleged in the petition of complaint against the accused petitioner. There is also allegation of installation of artificial means/device/contrivance against the petitioner. So, the petition of complaint prima-facie disclose criminal offence and the onus or burden of proof of the said prima-facie allegations against the accused-petitioner is heavily on the

complainant and the accused-petitioner is at liberty to controvert all those allegations during trial by cross-examining the prosecution witnesses and also by adducing and producing witnesses and documents before the trial court.

In view of the discussions made above and the reasons stated hereinbefore we hold that there is no reason for interference by this Court at this stage. We find that there is a prima-facie case to be tried by the trial court and thus the rule has no legs to stand being devoid of substance, is destined to fail.

In the result, the Rule is **discharged**.

The order of stay granted earlier by this Court stands vacated.

Communicate the judgment and order at once.

The trial court is at liberty to proceed with the case in accordance with law as early as possible keeping in mind that the case is of the year of 2012.

Md. Iqbal Kabir, J:

I agree.