IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Crl. Misc. No. M-15164 of 2014 (O&M)
Date of decision : January 12, 2015

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Sangeeta Garg

............Petitioner

Versus

State of Punjab and another

...........Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Rajan Bansal, Advocate for the petitioner.

Mr. D.S Virk, AAG, Punjab.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

The petitioner is seeking quashing of the FIR No. 730 of 9.12.2013 registered at Police Station Anti Power Theft, Ludhaina under Section 135 of the Indian Electricity Act, 2003 (Annexure P-2).

As per challan no. 1012 dated 18.11.2013, the seals of the electric meter of the petitioner which was installed outside his house on the electricity pole of the Department was found to be tampered. A case of theft was declared. A notice under Section 135 of the Indian Electricity Act, 2003 (hereinafter referred to as `the Act') was sent to the petitioner to deposit Rs. 2,01,483/- vide memo No. 896 dated 23.11.2013. In the above background, the FIR was registered.

The case of the petitioner was that he was permanent resident of House No. 3020, Gurdev Nagar, Ludhiana and was having an electricity connection in DS Category under A/C No. KS14/1556 and paying the electricity consumption charges on the basis of measured consumption without any default. She shifted along with her family members to House No. 72-K, Sarabha Nagar, Ludhiana in September/October 2012 on temporary basis as the above said house No. 3020 of the petitioner was under renovation. A temporary electricity connection Account No. T-19082 was got installed. She reshifted to the above said House No. 3020 Gurdev Nagar, Ludhiana in July/August 2013 and the said temporary connection was surrendered in October 2013. Upon receiving notice under Section 135 of the Act dated 23.11.2013, petitioner submitted a representation (Annexure P-3). Designated Authority of PSPCL vide its order dated 30.8.2013 reduced the amount from Rs. 2,01,483 to Rs. 31,809/- (Annexure P-4). The authorities while passing the order Annexure P-4 took into consideration that the original meter of the petitioner was installed outside the pole and the consumer had shifted to another house to get renovation of the house in question. Designated authority considering the consumption data and came to the conclusion that the consumer did not reside in this kothi for the period when the theft is alleged to have been committed. Two months charges were imposed upon him and the recovery was reduced from 2,01,483/- to Rs. 31,809/- and a revised bill (Annexure

P-5) was issued to the petitioner. The petitioner deposited the said amount under protest as directed by PSPCL on 3.3.2014 vide cheque No. 6843 dated 3.3.2014 for Rs. 31,809/- vide receipt No. 255 dated 3.3.2014 issued by PSPCL. The said receipt No. 255 dated 3.3.2014 issued by PSPCL is annexed herewith as Annexure P-6. The grievance of the petitioner is that compounding charges of Rs.60,000/- has been imposed by reviewing the aforesaid bill (Annexure P-5). Thereafter vide order/letter no. 2835 dated 13.3.2014 (Annexure P-7), PSPCL deleted word `Sidhi Kundi' (direct connection) from notice (Annexure P-1) from the case of the petitioner. On notice, a reply has been filed by respondent no.1 justifying that the FIR had been rightly registered on account of theft of electricity under Section 135 of the Act as the Punjab State Power Corporation Limited slapped a penalty of Rs. 2,01,483/- on account of theft of energy vide memo No. 896 dated 23.11.2013. Even if the amount of penalty was reduced to Rs. 31,809/-, the compounding charges of Rs.60,000/- have not been deposited and hence the offence cannot be compounded as per Section 152 of the Act. Respondent no.2 has filed the reply. But, none has appeared to assist the Court on behalf of respondent no.2. In the written statement, the respondents have justified the imposition of compounding charges of Rs.60,000 vide bill (Annexure P-5).

Petitioner has referred to the Regulation 21.2(c) of Supply Code which reads as under:

Use etc. of Meters

21.2 Supply and Installation of meters

(c) The Licensee may require a meter to be installed outside the premises of a consumer and in such an event, the entire cost of installing the meter outside the premises and providing a display unit within the premises will be borne by the Licensee. However, the cost of display unit will be treated as part of the meter cost while determining meter rentals. The display unit may not be installed by the licensee if the consumer so opts. In such an event monthly rentals on this account will not be levied. In a case where the meter/metering equipment is installed by the Licensee outside the premises of a consumer, the consumer will not be responsible for the protection of the meter from theft or damage to the seals/meter or tampering of the seals/meter.

The perusal of the above said notification dated 16.8.2013 shows that if a meter had been installed outside the premises of consumer, he cannot be made responsible for the protection of meter from theft or damage. The object of these Instructions was to extend the benefit to the consumer that if his meter was installed outside his premises and subsequently, the seal was found tampered with but it was not a case of theft the consumer will not be liable. In the present case on a representation made by the petitioner to the notice given by the Department. The Revenue authority of the Department vide a detailed order Annexure P-4 came to the conclusion that the petitioner had actually shifted from House No. 3020, Gurdev Nagar, Ludhiana to House No. 72-K, Sarabha Nagar, Ludhiana in September/October 2012 and had taken a temporary connection to continue with his renovation. After the renovation was completed he shifted back to his residence at Gurdev Nagar, Ludhiana and the temporary connection was surrendered. The installation date of temporary meter has been shown as 7.11.2012 and the date of uninstallation of the meter was 7.10.2013. During this period the main electricity connection of the house which was installed in the place outside the house of the consumer remained unutilised. After considering the consumption data of the temporary meter, a finding was recorded that the consumer did not reside in the house and used the electricity from House No. 72-K,Sarabha Nagar (Account No. KS 17/1639) during the said period. Vide order (Annexure P-4), two months charges were to be recovered from the petitioner. A perusal of this order shows that it was not a case of theft of electricity. The penalty amount had been assessed under Section 135 read with Section 126(6)/Section 154(5) of the Act as Rs. 31,809/-. Petitioner duly deposited the same vide receipt Annexure P-6. The compounding charges under Section 152 (2) of the Act are to be imposed in the case of theft of electricity and the consumer can get it compounded by making the necessary payments under the above said Section. In the present case, the

Department had taken a conscious decision while passing the order (Annexure P-4) that no electricity was consumed during the period when he was shifted to the house at Sarabha Nagar to get his house at Gurdev Nagar, Ludhiana renovated. No case of electricity of theft is made out as per the decision of the Department (Annexure P-4). Continuation of the criminal proceedings against the petitioner in the FIR could amount to an abuse of the process of law. The parameters set out in **State of Haryana and others v.Bhajan Lal and others**, **AIR 1992 SC 604 (1),** are applicable for quashing of the F.I.R in the present case. The power under Section 482 Cr.P.C should be exercised in the following circumstances:-

> (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
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> (4) Where, the allegations in the F.I.R do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a

magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

In the present case after the case of the petitioner was reviewed by the authorities vide Annexure P-4, a finding has been recorded that the meter in question was not used as the petitioner had taken a temporary connection for carrying out the renovation of the house at Gurdev Nagar, Ludhiana. Petitioner has deposited the penalty charges of of Rs. 31,809/-. Since no case of theft was made out, even the compounding charges could not be charged by the Department.

In view of the above, present petition is allowed and the FIR No. 730 of 9.12.2013 registered at Police Station Anti Power Theft, Ludhaina under Sections135 of the Act is hereby quashed.

January 12, 2015 **(RITU BAHRI)**
ritu **JUDGE**