

**THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 3243 of 2014 (O&M)
Date of decision: January 16, 2015

M/s Guru Kripa Trading Company

...Petitioner

Versus

Punjab State Power Corporation Limited and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers 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?**

Present: Mr. Vipin Mahajan, Advocate,
for the petitioner.

Mr. Manoj Chaudhary, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

1. The petitioner has purchased some scrap material from the respondents at Rs. 24,11,100/- and paid the entire amount to the respondent Corporation by 26/27.9.2013. The Corporation complained of theft of 37.4 MT which meant that the petitioner had lifted the scrap material more than what was sold to him, which was 27 MT and earned a case registered under two FIRs. The criminal prosecution is said to be still pending. The theft ought to relate only to the excess over what was purchased, for, a person cannot be said to have stolen his own goods. Consequently, if the petitioner shall not have the benefit of purchase, it ought to relate only to the excess of goods in respect of which there is an imputation of theft. Considering the fact that out of the total alleged theft, 4 MT was said to have been

recovered, the financial equivalent of 6.4 MT alone shall be the amount for which the petitioner would still be answerable, besides rendering him criminally liable, if the imputation of theft is proved. Since the contract has failed, it will be only appropriate that the petitioner is given back the benefit of the return of the money. As far as the Corporation is concerned, they have the benefit of only 4 MT of scrap and rest is lost. Having regard to the fact that the contract stands rescinded and there being no statutory lien available, under Section 30 of the Sales of Goods Act, which is all that a seller can enforce against a purchaser, I would allow for the return of the money to the petitioner by furnishing bank security to a portion of the goods, namely 50% of the value which is paid. I make no assessment for interest and if there is any claim for the same, the entitlement will be assessed on whether allegations of theft is established or not. If the petitioner furnishes security for 50% of the amount, either through a bank guarantee or immovable property security within a period of four weeks from the date of receipt of a copy of this order, the respondent Corporation is bound to return the whole amount. Any further rights of the parties will be worked out subsequent to the conclusion of the criminal proceedings before the trial court.

2. With the above observations, the writ petition stands disposed of.

January 16, 2015
prem

(K.KANNAN)
JUDGE