

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

CRR No.89 of 2010

Date of decision: 28th May, 2016

State of Haryana

... Petitioner

Versus

Kurda Ram

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Deepak Sabharwal, Addl. Advocate General, Haryana
for the petitioner/State.

Mr. Briz Mohan, Advocate for
Mr. Aman Dhir, Advocate
Amicus Curiae for the respondent.

FATEH DEEP SINGH, J.

Challenge in this criminal revision is to an order dated 20.08.2009 passed by the Court of learned Additional Sessions Judge, Narnaul discharging the respondent accused Kurda Ram in case got registered by way of FIR No.123 dated 26.07.2004 under Sections 379/430 IPC and Section 39 of the Electricity Act pertaining to Police Station Kanina, District Narnaul.

The brief facts that deserves to be highlighted are that SDO, Sub Division Kanina of DHBVNL sent a complaint to the Police Station that on 26.07.2004 the accused was found to be extracting illegally and unauthorizedly electricity thereby not only causing financial loss of

₹30,000 but was also indulging in committing theft of canal water and thus, causing diminution of its supply leading to the registration of present case. After due investigation and submission of challan, at the time of framing of charge through impugned order learned Court below held that since under the Electricity Act only a private complaint lies and therefore, the Court could not take cognizance of the offences and thus, discharged the accused. The same is subject matter of adjudication before this Court.

Heard Mr. Deepak Sabharwal, Additional Advocate General, Haryana representing the petitioner/State and Mr. Briz Mohan, Advocate for Mr. Aman Dhir, Advocate as Amicus Curiae on behalf of the respondent/accused and perused the records.

Similar question of law had earlier arisen for consideration before the Hon'ble Supreme Court of India in the case of '**Vishal Aggarwal and another v. Chhattisgarh State Electricity Board and another**' (Criminal Appeal No.275 of 2014 decided on 29.01.2014), whereby the Hon'ble Apex Court had adjudicated whether the amendment of Section 151 of Electricity Act 2003 which empowers the Court to take cognizance of an offence upon a police report by virtue of Section 173 Cr.P.C. would be applicable to the pending complaints filed before the above said amendment.

The contentions are within the four corners that the Electricity Act (in short, 'the Act') was amended by insertion of Section 151(A) and 151(B) with effect from 15.06.2007 whereby by virtue of this amendment it was laid down under Section 151(A) of this Act empowering the police to investigate commission of offences punishable under the Electricity Act and by way of Section 151(B) it was provided that offences under this Act would be cognizable and non-bailable; and thus, the effect of Section 151 of the Act prior to the amendment which only had the provisions of taking cognizance of such an offence only on the complaint of a competent officer was undone. It is not disputed by the counsel on the two sides that the amendment has taken effect with the Electricity Amendment Act 2007 with effect from 15.06.2007 and therefore, the only contentious issue is whether this subsequent amendment could operate prospectively or retrospectively and faced with the same very situation, their Lordships of Hon'ble Apex Court have laid down the proposition that amendment brought in it is clarificatory in nature and as such it would take into its ambit even pending matters and that it would be a retrospective amendment which would have in its sweep all the pending cases and therefore, makes it emphatically clear that at the time of passing of the orders of 20.08.2009 the amendment had already come into force and therefore, this amendment was applicable to the case in hand. The learned lower Court

has certainly fallen into an error and has thus wrongly discharged the accused. The impugned order being illegal and perverse is hereby set aside by way of acceptance of the instant revision. Parties are directed to appear before the trial Court, which shall proceed ahead into the matter as per law. Records be sent back forthwith.

(FATEH DEEP SINGH)
JUDGE

May 28, 2016
rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No