

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

CRM-M-9408 of 2011.
Decided on:-13.09.2017.

Hardeep Singh.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. G.S. Brar, Advocate
for the petitioner.

Mr. A.S. Dhaliwal, DAG, Punjab.

HARI PAL VERMA, J.

The petitioner has filed present petition under Section 482 Cr.P.C. for quashing of FIR No.195 dated 22.12.1994 under Section 7 of the Essential Services Maintenance Act, 1981 (for short, the ESM Act) registered at Police Station Civil Lines, Patiala, District Patiala on the ground that the provision of the ESM Act, under which the FIR in question was registered, had already been repealed on the date of cause of action.

Prayer has also been made to set aside the order dated 01.03.1997 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Patiala, whereby the petitioner was declared as a proclaimed offender.

Learned counsel for the petitioner has argued that the FIR in question was registered on 22.12.1994 under Section 7 of the ESM Act after a

period of almost 4 years when the ESM Act was already repealed on 23.09.1990. Further, the petitioner was never in the knowledge of registration of the present FIR as he had already left for England on 09.10.1992 and had been residing there since then. Therefore, the impugned order dated 01.03.1997 (Annexure P-2) declaring him as a proclaimed offender was passed without effecting proper service and without complying with the provisions of Section 82 Cr.P.C.

He has further argued that from bare perusal of the contents of FIR in question, it reveals that no offence under Section 7 of the ESM Act is made out against the petitioner.

On the other hand, reply by way of affidavit of Gurdev Singh Dhaliwal, PPS, DSP, City-II, Patiala has been filed on behalf of the respondent-State. In the said reply, it has been submitted that the petitioner was appointed as a Constable with the Punjab Police Department on 04.11.1989. However, since 17.03.1993, he absented from duty for which DDR No.52 dated 03.05.1997 with Police Lines, Patiala was recorded that the petitioner was absent without any permission. Efforts were made to trace the petitioner, but it was found that he had left India and gone abroad. Accordingly, the FIR in question was registered against him under Section 7 of the ESM Act at Police Station Civil Lines, Patiala. However, at the time of receiving the Challan, as provided under Section 173 Cr.PC, the District Attorney, Patiala had raised an objection that the case of petitioner is not made out under Section 7 of the ESM Act, rather, the case is required to be dealt with under Section 29 of the Police Act, 1861. Therefore, Challan

against the petitioner should be presented under Section 29 of the Police Act, 1861 instead of Section 7 of the ESM Act. Thus, it was on account of long absence of the petitioner and that too from the disciplinary forces, the police has submitted Challan against the petitioner under Section 29 of the Police Act, 1861 and not under Section 7 of the ESM Act. In the FIR in question, the petitioner was also declared a proclaimed offender vide order dated 01.03.1997 passed by learned Judicial Magistrate 1st Class, Patiala, as he did not appear before the trial Court

I have heard learned counsel for the parties.

The solitary argument as raised by learned counsel for the petitioner is that the FIR in question was registered under Section 7 of the ESM Act, which had already been repealed and the Challan was never presented under Section 29 of the Police Act, 1861.

However, argument of counsel for the petitioner has been refuted by learned State counsel, who has produced on record a certified copy of the Challan so presented before the trial Court. In the said Challan, Section 7 of the ESM Act has been encircled and Section 29 of the Police Act, 1861 has been written.

Section 7 of the ESM Act reads as under:

“7. Penalty for giving financial aid to illegal strikes. -

“Any person who knowingly expends or supplies any money in furtherance or support of strike which is illegal under this act shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees , or with both.”

Similarly, Section 29 of the Police Act, 1861 reads as under:

*“29. **Penalties for neglect of duty, etc.** - Every police officer who shall be guilty of any violation of duty or willful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave, or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay or to imprisonment, with or without hard labour, for a period not exceeding three month, or to both.”*

Therefore, the plea of the petitioner that the Challan has been presented under Section 7 of the ESM Act and the FIR in question is liable to be quashed, cannot be accepted. It is during the course of trial and that too, at the time of framing of charge, the trial Court shall form an opinion that as to whether the petitioner is to be charge-sheeted under Section 7 of the ESM Act or under Section 29 of the Police Act, 1861. Moreover, for an inordinate absence from duty and that too from the disciplinary forces, the departmental proceedings initiated against the petitioner have culminated into his dismissal from services.

The judgment in *AIR 1954 Supreme Court 683* titled as *The State of U.P. Versus Seth Jagamander Das and others* supports the contention of the petitioner to the extent that when a Statute is repealed or

comes to an automatic end by efflux of time, no prosecution for acts done during the continuance of the repealed or expired Act can be commenced after the date of its repeal or expiry because that would amount to the enforcement of a repealed or a dead Act. However, in the case in hand, the record reveals that the offence under Section 7 of the ESM Act has already been deleted as the District Attorney had opined that Section 7 of the ESM Act is not attracted in the case, rather, Challan has been presented against the petitioner for the offence under Section 29 of the Police Act, 1861 and Section 7 of the ESM Act has been encircled.

In view of these facts and circumstances of the case, the very plea of the learned counsel for the petitioner that the Challan has been presented under Section 7 of the ESM Act cannot be accepted at this stage, as the same is required to be considered by the trial Court during the course of trial including at the time of framing of charge.

Therefore, this Court does not find any merit in the present petition and the same is, accordingly, dismissed.

September 13, 2017
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No