

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.1621 of 2011

ORDER:

This petition is filed under Section 482 Cr.P.C by the petitioner/ A.1 seeking to quash the proceedings against him in E.S.C.No.3/2010 on the file of I Additional Metropolitan Sessions Judge, Hyderabad.

2) The factual matrix of the case is thus:

a) LW.1 is the complainant and he is the Assistant Divisional Engineer/Dist-II in AP TRANSCO, A.C.Guards, Hyderabad. He is authorised to inspect Electricity Service Connections and to detect pilferage of energy and to lodge complaint before the jurisdictional Anti Power Theft Squad Police Station for prosecution. The place of offence in the instant case is premises bearing No.10-5-2/1/2, Patel Residency Apartments (constructed by the Builder (A.2)—M/s. Patel Constructions Company), situated at Masab Tank, Hyderabad.

b) A.1 is the registered consumer of S.C.Nos.A3-769 and A3-892, Cat.II and he is the owner of the premises No.10-5-2/1/2, situated at Masab Tank, Hyderabad. Both the services were under disconnection. While-so A.1 was granted with municipal permission for construction of Apartments in the said premises. The said premises was given to A.2, who is the Managing Director of M/s. Patel Constructions Company, under an agreement to develop the land and structures. A.3 is the Executive Director of M/s. Patel Constructions Company and A.4 and

A.5 are the Maintenance Incharge and Supervisor respectively of the said construction company, who are appointed by A.2 for collection of maintenance and electrical charges from the residents of Patel Residency Apartments.

c) While-so on 28.01.2000 at 16:30 hours, LW.1 along with his staff LWs.2 to 4 inspected the premises No.10-5-2/1/2, Patel Residency Apartments. As stated earlier, the said premises was connected with SC No.A3-769, Cat.II and SC No.A3-892 and both the service connections were under disconnection. In the said premises, Patel Residency Apartments were constructed by A.2 and the power was being utilised by A.2 for construction of Apartments. Some flat owners were under occupation and the office of M/s. Patel Construction Company is situated in the first floor at Flat No.102 and A.2 runs his business in the same Apartments as "Patel Residency". During the inspection done by LWs.1 to 4 on 28.01.2000, they found direct tapping from nearby LT pole and deriving the power by connecting to the Panel Board with 10 sq.mm Aluminium PVC wire, 3 Nos and twin core service wire measuring about 40 meters connected to the phases and neutrals through which the flats were given connection including the office of M/s. Patel Constructions Company, situated in Flat No.102 and thus they were utilising the power through illegal connection by direct tapping. Squad party got videographed the scene of offence depicting the process of direct tapping of power from the LT Pole to the Patel Residency Apartments by Builder/A.2. Earlier also, the Apartments of Patel Residency was booked

for pilferage of energy on 31.12.1998 by LPE wing vide Crime No.21/1988 of A.P.T.S. Team-II and the works of pilferage was assessed at Rs.4,88,557/-. In the present instance, the loss caused to the APTRANSCO was to the tune of Rs.2,19,680/-. LW.1 prepared the inspection notes and lodged a written complaint with LW.14, which was registered as a case in Crime No.3/2000 under Section 39 of Indian Electricity Act, 1910 (for short "I.E.Act"). The police after investigation filed charge sheet against A.1, A.4 and A.5 for the offences under Sections 39-A r/w 39 and 44 of I.E. Act and against A.2 and A.4 for the offences under Sections 39 and 44 of I.E. Act.

Hence the instant quash petition.

3) Heard arguments of Dr.J.Vijaya Lakshmi, learned counsel representing Sri K.Anoop Kumar, learned counsel for petitioners and learned Additional Public Prosecutor for the State (Telangana).

4) Severely fulminating the charge sheet, learned counsel for petitioner/A.1 would argue that A.1 is the owner of the premises No.10-5-2/1/2(ground floor) and 10-5-2/1/2A(1st floor), Masab Tank, Hyderabad and he gave the same for development-cum-sale to A.2, who is the Managing Director of M/s. Patel Constructions Company under agreement to develop the land and structures on 05.12.1993. Learned counsel would further submit that through letter dated 13.12.1999, the petitioner/A.1 requested the authorities of AP TRANSCO, Hyderabad to disconnect the two service connections referred supra, as the premises was handed over to A.2 for development and accordingly the service

connections were disconnected. Therefore, the petitioner/A.1 has nothing to do with the alleged pilferage of power committed by A.2 to A.5 to provide power to the inmates of Patel Residency. Therefore, continuation of criminal proceedings against the petitioner/A.1 would amount to abuse of process of the Court. Learned counsel thus prayed to allow the petition.

5) Per contra, learned Additional Public Prosecutor would argue that petitioner/A.1 is a privy to the offence as he abetted A.2 to A.5 to commit pilferage of energy and therefore, he cannot plead ignorance.

6) The point for determination is:

“Whether there are merits in this petition to allow?”

7) **POINT:** Admittedly, the petitioner/A.1 is the owner of premises No.10-5-2/1/2 (ground floor) and 10-5-2/1/2A (1st floor), situated at Masab Tank, Hyderabad. He gave the said premises for development and construction of the flats to A.2, who constructed flats in that place under the name and style “Patel Residency Apartments” and sold to different customers. In the backdrop of these facts, the prosecution allegation as per charge sheet is that when LWs.1 to 4 representing Anti Power Theft Squad, visited the premises on 28.01.2000 and inspected the same, they found a direct tapping of energy from nearby LT pole and deriving the power by connecting to the Panel Board with 10 sq.mm Aluminium PVC wire, 3 Nos and twin core service wire measuring about 40 meters connected to the phases and neutrals and by this process, the flats were

given connections including the office of M/s. Patel Constructions Company, situated in Flat No.102. LW.1 said to have got videographed the premises to show how the power was being tapped illegally. Be that it may, the contention of petitioner/A.1 is that long back after entrusting the premises to A.2, he addressed a letter to AP TRANSCO to disconnect S.C.Nos.A3-769 and A3-892, Cat.II and they were accordingly disconnected and therefore, he has nothing to do with the alleged pilferage of energy. To buttress the contention of petitioner/A.1, learned counsel for petitioner produced a copy of the letter dated 13.12.1999 addressed by the petitioner/A.1 to AP TRANSCO. In the said letter, petitioner/A.1 stated that he was the owner of the House No.10-5-2/1/2 (ground floor) and 10-5-2/1/2A (1st floor), Masab Tank, Hyderabad and he gave the same for development-cum-sale to Banjara Construction Company Private Limited on 30.09.1989. Later, the said agreement for development-cum-sale was transferred to M/s. Habib Mohiuddin on 19.06.1992 and later the said agreement was again transferred to M/s. Patel Constructions on 05.12.1993 represented by A.2. The letter further shows that the Electricity Consumer Meter bearing Nos.A3-892 and A3-769, were showing the name of petitioner/A.1 as Consumer, though he has given the premises for development. It was further mentioned that the developer/builder had not yet handed over flats full to his share and separate consumer meters have not yet been allotted to the purchasers. Thus the petitioner requested in the said letter to make necessary corrections in the records by deleting his name as consumer and incorporate the name of M/s. Patel

Constructions against the service connection Nos.A3-892 and A3-769. The said letter contains the stamp of AP TRANSCO with date as 13.12.1999. In my considered view, this letter supports the contention of petitioner/A.1. Further, in the charge sheet itself it is mentioned that both the service connections i.e, A3-769 and A3-892 (Cat.II) which stood in the name of A.1 were under disconnection. This mentioning vivifies that pursuant to the letter dated 13.12.1999, the authorities have disconnected the two service connections which stood in the name of petitioner/A.1. Admittedly, the inspection was done on 28.01.2000, by which time the aforesaid two service connections were already disconnected and thereby petitioner/A.1 had nothing to do with the premises as he had given it for development to A.2 and in fact flats were also constructed and sold by A.2. Therefore, if any pilferage of energy was committed as alleged in the charge sheet, A.2 to A.5 alone are responsible but not petitioner/A.1. Hence, in my considered view, continuation of the proceedings would amount to abuse of process of the Court. In the decision reported in *State of Haryana and others v. Ch. Bhajan Lal and others*¹, the Apex Court has laid down the following guidelines as to when the High Court can exercise its plenary powers under Section 482 Cr.P.C. to quash the proceedings to prevent abuse of process of the Court. They are:

“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.

¹ AIR 1992 SC 604

2. *Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
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.*
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.*
6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

In the light of above ruling when the facts in the charge sheet are analysed, no offence could be made out against petitioner/A.1 even if the facts in the charge sheet are presumed to be true.

8) In the result, this Criminal Petition is allowed and the proceedings against the petitioner/A.1 in E.S.C.No.3/2010 on the file of I Additional Metropolitan Sessions Judge, Hyderabad are quashed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 24.10.2018
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