

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

(i) CRM No.M-31139 of 2017 (O&M)

Kamal Kumar

...Petitioner

VERSUS

State of Haryana

...Respondent

(ii) CRM No.M-34909 of 2017 (O&M)

Satnarain

...Petitioner

VERSUS

State of Haryana

...Respondent

Date of Decision: August 09, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.R.S.Rai, Senior Advocate with
Ms.Rubina, Advocate
for the petitioner (in CRM No.M-31139 of 2017).

Mr.R.S.Longia, Advocate
for the petitioner (in CRM No.M-34909 of 2017).

Mr.B.S.Virk, DAG, Haryana
for the respondent-State.

INDERJIT SINGH, J.

CRM No.27494 of 2018 in CRM No.M-31139 of 2017

This application is allowed, subject to all just exceptions.

Annexure P-17 is taken on record.

Main cases

Both the above-mentioned cases are taken up together as these

have arisen from same FIR.

Petitioners have filed these petitions under Section 482 Cr.P.C. for quashing of FIR No.995 dated 27.10.2016 under Sections 406, 420, 411 IPC (Sections 379, 409, 467, 468, 471 IPC and Section 13(c) (d) of the Prevention of Corruption Act added later on) registered at Police Station City, Jind and all the subsequent proceedings arising therefrom.

Notice of motion was issued. Learned State counsel appeared and contested the petitions.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

From the record, I find that FIR in the present case has been registered on the basis of complaint of SDO (Operations), Sub Division No.2, Dakshin Haryana Bijli Vitran Nigam (DHBVN), Jind. It is in the FIR that site M/s Aastha Electricals Railways Road, Jind was inspected on 26.10.2016. Other store/workshops were also inspected by the police and also by distribution companies of UHBVN and DHVNS staff in the presence of Kamal Kumar, owner of the firm. As per the FIR, the material was found which belongs to UHBVN/ DHBVN lying in the store. The identification was done on the basis of P.O. Nos. mentioned on the material. Other material was too available in the store which bears no mark on it and as such, it cannot be verified whether that belongs to Nigams or not. The items belonging to Nigams are; 25 KVs Transformers Sr.No.122505 make Centure; 100 KVT/F bearing workshop No.37817; ACSR (Conductor) belonging to Nigams stores 6/1x3.35 mm; XLPE Cable 3x95 mm-45 mtrs (approx.); Transformer oil drums 193.5 kg; single and three phase meters

evidence. The remaining two stores were also inspected and Transformers 63KV T/F without plate; 100 KVA T/F make Maha Shakti Sr. No.2088; 100 KVA T/F Ganpati make and 100 KVA T/F Ganpati make Sr.No.25/2011 were recovered. In the present case, the allegations against petitioners are that a large number of articles, which belonged to UHBVN or DHBVN, were found in the store of Kamal Kumar. The challan in the present case has not been presented so far and investigation is still going on. The case is at preliminary stage. In no way, it can be held that no cognizable offence is made out.

Learned counsel for the petitioners argued that as petitioner Kamal Kumar had been awarded so many works, which have been completed and certificate was also issued regarding completion of work by the competent authority later on, therefore, these articles were given to him by the officers of the department. As regarding petitioner Satnarain, he was posted as Lineman in the office of SDO, Operations, Sub Division UHBVN. In the case of Satnarain, learned counsel for the petitioner argued that in the store of department, only 840 litres (four drums of oil) was available, which was drawn but fell short against the requirement and there was lot of hue and cry for restoration of electricity, therefore, SDO, Sanoli Road, Panipat, directed Satnarain to make arrangement from any agency by borrowing one drum and he borrowed one drum from M/s Aastha Electricals and later on, one drum of oil was given/returned to M/s Aastha Electricals.

On the other hand, learned State counsel contested the petitions and argued that perusal of the stock register shows that articles were not supplied as per the procedure. Otherwise also, transformers etc. were to be

supplied immediately before the installation and these cannot be handed

over immediately by allotting work. He also argued that during investigation, these articles were found delivered from the store etc. and all these articles were given to Kamal Kumar in connivance with officials of UHBVN. He further argued that similarly, there is no procedure to borrow oil and to return the same from the store whenever available. Learned State counsel also contended that investigation is still going on and at this stage, FIR cannot be quashed and perusal of the FIR shows that cognizable offence is made out.

First of all, I find that, it is settled law that in the quashing petition, this Court is not to give findings of fact nor defence of the accused is to be decided at this stage. Secondly, the Investigating Officer is to collect the evidence for presenting final report before the Court. If the report under Section 173(2) Cr.P.C. is presented, then the trial Court is to give the findings first, on the basis of evidence produced by the prosecution or by the defence. In the quashing proceedings, without any evidence, this Court cannot give the findings on the basis of defence of the accused. The perusal of the record shows that no ground is made out for quashing the FIR at this stage. In no way, it can be held at this stage that registration of the FIR against the petitioners is abuse of process of law or amounts to miscarriage of justice. No ground is made out for quashing the FIR.

Therefore, finding no merit in both the petitions, the same are dismissed.

August 09, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No