

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

**CR No.3390 of 2018(O&M)
Date of Decision: 17.10.2019**

Santosh

.....Petitioner

Versus

**SDO City Sub Division, UBHVNL, Jhajjar, District Jhajjar
.....Respondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Vijay, Advocate
for the petitioner.

Mr. Sunil Kumar Sharma, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has laid challenge to the judgment and decree dated 10.04.2018 passed by Additional District Judge, Jhajjar, vide which suit for declaration and permanent injunction with consequential relief of mandatory injunction filed by the petitioner was dismissed.

[2]. Plaintiff/petitioner filed a suit for declaration and permanent injunction with consequential relief of mandatory injunction, challenging the amount of Rs.55,963/- of sundry

charges as mentioned in the electricity bill for the month of June/July, 2017 for total amount of Rs.74,741/- including surcharge, LLI and its notice issued by the defendant on the basis of false checking. Plaintiff/petitioner claimed the aforesaid charges to be illegal, null, void and the plaintiff is not liable to pay the aforesaid illegal amount of Rs.55,963/- and interest/surcharge thereon. Permanent injunction was also sought, restraining the defendant from disconnecting the electricity supply of the house of the plaintiff on the basis of illegal checking report.

[3]. Plaintiff is having a domestic electric connection bearing No.8445501161 with sanctioned load of 3.000 kw. On 04.06.2017, defendant issued LLI showing the case of suspected theft of energy. The meter of the plaintiff was allegedly inspected by the vigilance team on 04.06.2017 at 1.47 AM (at night) by a checking team. The meter was not found blinking. LLI was prepared with the observation that the pulse of the meter was not blinking, but load was running inside the house. It was observed that the SDO Operation shall verify if there is any cut in the incoming PVC of the premises of the plaintiff on the next date. The aforesaid LLI (Ex.D1) was prepared on 04.06.2017, but the consumer was not associated as the raid was conducted during night hours. On the next day

i.e. 05.06.2017, the team again inspected the meter. The seal of the meter was found intact. The team has not recorded anything in respect of blinking of the meter. No cut was found in the incoming PVC of the premises of the plaintiff. The meter was found installed at the pole near the house. In the PVC of the premises of the neighbour passing through the chhajja of the house of the plaintiff, a cut was found which was tapped by cello tape. On the basis of aforesaid cut, the report was submitted against the plaintiff. No illegal connection from the alleged cut was found in existence in the premises of the plaintiff as per LLI (Ex.D2) prepared by the team. Copy of the aforesaid LLI was supplied to the plaintiff.

[4]. On the basis of aforesaid LLI, Memo No.SDJC/2017/599 dated 07.06.2017 (Ex.D4) was issued to the plaintiff. On the basis of cut found in the incoming PVC of the house of the neighbour, theft was presumed against the plaintiff. The aforesaid notice was issued on the subject of order of assessment by licensee of theft under Section 135 of the Electricity Act, 2003. Vide notice dated 07.06.2017 (Ex.D5), notice was issued to the plaintiff for compounding the offence of theft of electricity under Sections 135 and 152 of the Electricity Act, 2003. Simultaneously, an information was given to the police for launching of prosecution. No prosecution was

launched.

[5]. After completion of pleadings, both the parties went to trial on the following issues:-

- “1. Whether the bill of Rs.74,741/- for the month of June/July on the basis of LLI report dated 04.06.2017 showing 'a suspected theft of energy' and illegal amount of Rs.55,963/- has been shown as sundry charges/arrear is wrong, illegal, null and void? OPP*
- 2. Whether the plaintiff is entitled to decree of mandatory injunction as prayed for? OPP*
- 3. Whether the suit of the plaintiff is not maintainable in the present form? OPD*
- 4. Relief.”*

[6]. Plaintiff examined herself as PW 1, wherein she has stated that on 04.06.2017, there was no theft of electricity committed by her, nor she had any knowledge about the visit of vigilance team in her premises. She stated that there is a double battery inverter installed in her house along with silent generator. In the night of 04.06.2017, electricity load in her house was operated by the inverter and generator as the generator get starts automatically after stoppage of electricity supply. On 05.06.2017, a team of employees of the electricity department came and they checked the meter and no cut was found by them in the incoming PVC of the house of the plaintiff. After recording her statement, the plaintiff closed her evidence

on 14.03.2018.

[7]. On the other hand, defendant examined Mandeep Sindhu, SDO as DW 1 who has stated that as per LLI dated 04.06.2017 of the raiding party, the pulse of the meter was not blinking, but load was running inside the house. The witness has not stated in his testimony that whether due to electricity supply or operation of generator, load was running inside the house. In his cross-examination, the witness has admitted that the raiding party did not enter the house due to night hours. The meter was installed at the pole and the same was off. The load was not running as there was no pulse in it, but load was in operation in the house. The meter was not removed, nor the same was got checked by them in the lab. No person was met at the time of checking. Theft was suspected at that time. The witness has admitted in his cross-examination that it is true that when the light is not in operation, then blinking in the meter stops. The witness further stated that there was light at that time, but he has not adverted to anything to authenticate the running of electricity at that time, except to state that the supply was in operation inside the house. He also admitted that if the consumer stops the supply inside the house, then, blinking in the meter would stop automatically and there will be no meter reading advancement and the load in terms of MDI would not be

displayed. He further admitted that the light was on in the house of the consumer and he heard the noise of the cooler. The witness did not state anything with regard to the fact whether the light which was in operation in the house of the plaintiff was on account of use of genset or by means of supply of electricity on account of theft mechanism. Defendant has also examined Sumit Kumar, J.E. of the office of SDO Operation City as DW 2. The said witness has also stated on the broad features that there was no cut in the main incoming PVC of the house of the plaintiff. The meter was installed at the pole near the house of the plaintiff, Incoming PVC was found passing near to the chhajja of the house of the plaintiff where a cut was found, but the same was tapped with the help of cell tape.

[8]. Admittedly, the said incoming PVC did not belong to the house of the plaintiff, rather the same belonged to the house of the neighbour. The cut was found tapped and was not in operation in terms of any live PVC connected with the cut showing any pilferage in the house of the plaintiff. In his cross-examination, the witness in the first instance admitted that he was not present on 04.06.2017 along with checking team at the spot, but he was the member of the checking team on 05.06.2017. The witness admitted that there was a cut in the incoming PVC of the house of the neighbour which passes near

to the chhajja of the house of the plaintiff.

[9]. From the aforesaid facts, it can be noticed that theft of electricity has been presumed solely on the basis of availability of cut in the incoming PVC of the house of the neighbour. The incoming PVC of the house of the neighbour happens to pass near to the Chhajja of the house of the plaintiff. No pilferage of the electricity was found at the spot either on 04.06.2017 or on 05.06.2017. In the LLI report dated 04.06.2017, blinking of the meter was found to be stopped, but in LLI report dated 05.06.2017, no such feature was noticed by the inspecting team. The blinking and non-blinking of the meter was directly proportional to the stoppage of supply by the consumer herself in her house. The said event can happen in case of no supply from the department and the supply is being generated through the mechanism of genset. In such eventuality, blinking of the meter would stop. This fact has been admitted by DW 1 Mandeep Sidhu, SDO Vigilance when he was cross-examined on 16.03.2018.

[10]. From the testimonies of DW 1 and DW 2, positive fact has come to fore that the witnesses have not verified that the running of electricity in the house of the plaintiff was only on account of electricity supply of department and not on account of operation of genset and inverter in the house of the plaintiff.

Non-blinking of the meter cannot be attributed to commission of theft alone, rather the same can happen during the course of supply through genset/inverter when electricity supply is off.

[11]. Admittedly, the raiding team has not removed the meter for any lab checking. The checking report in the context of instruction No.9 issued by the department cannot be held to be legal inasmuch as that defendant was legally required to make video-graphy of the events dated 04.06.2007 and 05.06.2017. As per instruction No.9, pertaining to procedure for inspection of premises, detection of theft of electricity and framing a case for theft of electricity, video-graphy/recording of all the events in a digital camera is required as an essential feature for ready reference of such event. The aforesaid instruction No.9 has been issued by the department for dealing with the cases of theft of electricity and the instruction prescribes that the investigating officer/officials shall take along with them the digital camera/video or any other recording devise preferably having the facility of date and time stamp for recording the complete events during the course of checking of the premises. While inspecting and checking the premises, the raiding party should record whole event after reaching the premises upto leaving the premises through video-graphy in the camera/digital camera. The authorized inspecting officer shall keep one CD with him

and hand over one CD to assessing officer.

[12]. Admittedly, the aforesaid exercise has not been done.

In a case of similar violation, the High Court in **CWP No.9582 of 2013** titled **D.H.B.V.N.L Vs. Permanent Lok Adalat and another** decided on 01.04.2014 has observed that non-compliance of aforesaid instruction(s) would entail in disbelieving the stand of the department.

[13]. In view of admitted facts on record, it is found that the defendant has drawn conjecture against the plaintiff solely on the ground of availability of cut tapped with cello tape in the incoming PVC of the house of the neighbour that happens to pass near to the chhajja of the house of the plaintiff. No other evidence has been collected to show any pilferage at the instance of the plaintiff through the cut in the incoming PVC of the house of the neighbour. No complaint was ever made by the neighbour. No action has been taken against the consumer of incoming PVC where the cut was detected by the investigating team. The case of theft has to be decided on the basis of proving guilt of the accused/consumer to the hilt beyond all reasonable doubt.

[14]. It appears that the present case has been decided by the Additional District Judge, Jhajjar only on the basis of preponderance of probability i.e. on the basis of a cut found in

the incoming PVC of the house of the neighbour which passes near to the chhajja of the house of the plaintiff. The department has not adhered to instruction No.9 in order to authenticate the alleged misconduct on behalf of the plaintiff/petitioner.

[15]. For the reasons recorded hereinabove, I find that impugned judgment and decree is not legally sustainable and is liable to be set aside. This revision petition is accordingly allowed. Impugned judgment and decree dated 10.04.2018 passed by Additional District Judge, Jhajjar is hereby set aside. Normal consequences to follow.

17.10.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking **Yes/No**

Whether reportable **Yes/No**