

CRM-M-17241 of 2014

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

CRM-M-17241 of 2014
Date of Decision: 11.02.2019

Hasan Mohd.

...Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Sapan Dhir, Advocate, for the petitioner.
Mr. Munish Sharma, AAG, Haryana.
Mr. Deepak Sabherwal, Advocate, for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Through instant petition under Section 482 Cr.P.C. prayer has been made for quashing FIR No.98 dated 21.07.2012 registered under Section 135 of the Electricity Act, 2003 (in short the 'Act') pertaining to Police Station I&P, Sushant Lok Gurgaon along with all consequential proceedings arising therefrom.

According to the prosecution, on 18.07.2012, premises of the petitioner M/s Naseem Dairy, Dhanna Road, Pinangwan, District Mewat, was checked by complainant's team and petitioner was found illegally stealing electricity directly from H.T. line of 11 KVA through a transformer. Consequently, aforesaid FIR was registered against him. After due investigation, police filed final report under Section 173(2) Cr.P.C. against the petitioner. Petitioner therefore was charge-sheeted vide order dated 30.04.2014 for commission of offence under Section 135 of the Act.

CRM-M-17241 of 2014

time of submission of final report, transformer, which was allegedly recovered from the petitioner, was not available with the police, which fact specifically finds mention in the final report. Vide letter (Annexure P-4 Colly), Superintending Engineer (Operation Circle), Gurgaon, directed the Executive Engineer (Operation) to enquire about missing transformer, which further fortifies the plea of the petitioner that no transformer was allegedly recovered from the petitioner. In the checking report, no transformer number was mentioned. Even no alleged theft of the petitioner was recorded. Petitioner was making payment of his electricity bills regularly.

On the other hand, learned counsel for the respondents refuting above submissions, contends that at the time of raid at the premises of the petitioner, photographs (Annexure R-2/1 Colly) were clicked, which show stealing of electricity energy by the petitioner by connecting wires directly to high transmission line. Photograph of the recovered transformer, used in the crime, was also clicked. Deputy Superintendent of Police vide his reply dated 19.7.2018 has clarified that transformer allegedly recovered from the petitioner was lying in the police '*malkhana*'. Therefore, same was never found missing.

Having heard learned counsel for both the sides and taking into account overall facts and circumstances, this Court is of the considered view that matter requires appreciation of evidence. Petitioner would definitely get an opportunity to defend himself during trial. This Court while exercising power under Section 482 Cr.P.C. cannot appreciate evidence, to be led before the trial Court. Prosecution story cannot be thrown out only

CRM-M-17241 of 2014

on the basis of single line in the final report under Section 173(2) Cr.P.C. that transformer allegedly recovered from the petitioner was not available inasmuch as as per reply of the DSP dated 19.7.2018, same is available in the '*malkhana*' of the concerned police station. Photographs clicked at the spot by the raiding party showing stealing of electricity energy by the petitioner can very-well be refuted by the petitioner in his defence.

In view of above, instant petition being devoid of any merit is dismissed.

However, anything observed hereinabove shall not be construed as an expression of opinion on the merits of the case.

February 11, 2019
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No