

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.2406 of 2009 (O&M)

DATE OF DECISION: APRIL 10, 2019

STATE OF HARYANA

...PETITIONER

VERSUS

RAM SARAN

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. ANKUR MITTAL, ADDL.A.G., HARYANA
FOR THE PETITIONER.

MR. SUNIL SIHAG, ADVOCATE
FOR THE RESPONDENT.

MANOJ BAJAJ, J.

The State of Haryana is in criminal revision to assail the order dated 18.5.2009 passed by Special Judge, Faridabad whereby respondent (accused) was discharged in case FIR No.23 dated 23.1.2006 registered at Police Station Mujessar for the offences under Section 135, 138 of the Electricity Act, 2003 (for short 'the Act')

The brief facts leading to the revision are that a checking party of Dakhsin Haryana Bijli Vitran Nigam Ltd. (for short 'DHBVNL') inspected the premises of M/s Faridabad Hotel Delite Pvt. Ltd., Plot No.23B, Industrial Area, Faridabad owned by Ram Saran Bhatia (accused-respondent) on 17.1.2006. It was found that there was dishonest use of electricity, which is punishable under Sections 135 and 138 of the Act. According to the report, loss of ₹63,33,347/- was caused. Thereafter, a formal complaint was made by the SDO(OP), Sub Division No.3,

DHVBNL, Sector 22, Fariadabad whereupon case FIR No.23 dated 23.1.2006 for the offences under Sections 135 and 138 of the Electricity Act, 2003 was registered. Prior to it, a demand notice was issued on 19.1.2006 giving the respondent 3 days' time for compounding the offences by paying the amount, however, the same was not responded to. After completion of the investigation, a final report under Section 173 Cr.P.C. was submitted.

Learned trial Court after considering the final report proceeded to discharge the accused by way of its judgement dated 18.5.2009, which is under challenge.

Learned counsel for the parties have been heard and with their assistance, the case file has been examined carefully.

Learned counsel for the State contends that there is sufficient material on record which *prima facie* makes out a case of theft committed by the respondent punishable under Sections 135 and 138 of the Electricity Act, 2003. According to the learned counsel, the trial Court has proceeded to discharge the accused, whereas it is not the case where the prosecution could have been deprived of its right of adducing evidence and establishing charges against the accused.

On the other hand, learned counsel for the respondent has addressed his arguments in support of the impugned order. It is contended that the order is based on correct appreciation of material on record. According to him, for the same occurrence, previously FIR No.20 dated 19.1.2006 was registered wherein initially the offences punishable under Section 135 and 138 of the Electricity Act, 2003 were incorporated,

however, the same were deleted. It is submitted that the proceedings in the said FIR also ended in discharge by the Court.

The trial Court proceeded to discharge the accused primarily on two grounds; firstly, lack of jurisdiction in view of Section 151 of the Electricity Act, 2003 which contemplates that only mode of cognizance is the complaint in writing by the competent authority and police has no jurisdiction to register an FIR; secondly, the trial Court held that previously for the same occurrence on the basis of report dated 17.1.2006, FIR No.20 dated 19.1.2006 under Sections 135, 138 of the Electricity Act, 2003 read with Section 435, 427 and 201 IPC was registered, however, the offences under Section 135 and 138 of the Electricity Act, 2003 were deleted and the offences punishable under Sections 435 and 427 IPC were maintained by the police. It is contended that the subsequent FIR amounts to double jeopardy as the accused cannot be punished twice on the same set of allegations.

At this stage, it is necessary to read Section 300 IPC which is extracted below:-

Section 300 IPC reads as under:-

“300. Person once convicted or acquitted not to be tried for same offence:-

(1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence

for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under subsection (2) thereof.

(2) A person acquitted or convicted of any offence afterwards tried with the consent of ore State Government for any distinct offence for which a separate charges have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried

again for the same offence except with the consent of the court by which he was discharged or of any other court to which the first-mentioned court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation: - The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.”

As far as the doctrine of double jeopardy is concerned, the same may not be attracted in the present set of facts and circumstances of the case, as in case FIR No.20 dated 19.1.2006 the offences mentioned were punishable were under Section 435, 427 and 201 IPC, i.e. 'Mischief' and 'Disappearance of evidence' and the ingredients to constitute the same are entirely different from that of theft of electricity punishable under Sections 135 and 138 of the Electricity Act. Of course, originally, those Sections were incorporated, but were not included in final report, while sending the accused for trial. The classification of offences is distinct and therefore, it cannot be said that the accused was put to trial for the same offence twice. Besides, in FIR No.20 dated 19.1.2006, there was no trial and the accused was discharged. The principle of double jeopardy is attracted where a person is either convicted or acquitted previously and that too for the same offence. Acquittal or conviction, as the case may be, is after completion of the trial when the prosecution has discharged the onus by adducing its

evidence.

The explanation of Section 300 IPC further clarifies the situation that dismissal of a complaint or a discharge is not an acquittal for the purpose of this Section. Therefore, in view of the above, this reasoning adopted by the trial Court in the impugned judgment is improper and is against the facts and material on record. Resultantly, the same is set aside.

However, the provisions of Section 151 of the Electricity Act, 2003 clearly stipulates that cognizance can be taken only on the basis of a written complaint made by the competent authority. The provision was amended w.e.f. 15.6.2007 by the Act of 26 of 2007, whereby a Proviso was added making cognizance by the police as alternative valid mode of prosecution. Since, in the present case, the occurrence is of the year 2003, therefore, at that stage, cognizance by the police was improper. On that count, the observations of the trial Court below is correct and the impugned order resultantly does not call for interference as far as maintainability of the FIR is concerned.

It is also brought to the notice of the Court that the respondent-accused had been indulging in similar kind of illegal activities on numerous occasions previously also. Two FIRs were also previously registered against him bearing No.21 dated 14.1.2006 and FIR No.22 of 14.1.2006 under Section 135/138 of the Indian Electricity Act, 2003, Police Station Kotwali, Faridabad. In those two cases, after completion of investigation, the trial Court framed the charges against the respondent, which in revision petition before the Sessions Court were maintained. The respondent had brought

CRM No.M-5330 of 2010 and CRM No.M-7209 of 2010 dated 30.5.2001.

This Court examined the issues relating to cognizance by the police and proceeded to accept the petitions and the FIRs were quashed. At the same time, liberty was granted to the Department to avail remedy by way of filing a complaint. Relevant portion of the order dated 30.5.2001 is extracted below:-

“Mr. P.S. Virk, counsel for the respondent-State has not been able to dispute the settled proposition of law. He submits that since the defence under Sections 135/138 of the Act has been committed by the petitioner, liberty should be granted to the respondent to initiate the compliant, which is the correct form to recover the loss suffered by the Electricity Board (DHBVNL).

In view of the facts, the FIR No.22 dated 14.1.2006 under Section 135/138 of India Electricity Act 2003 registered at Police Station Kotwali, Faridabad alongwith all consequential proceedings arising therefrom is quashed. However, liberty is granted to the DHBVNL to initiate complaint as provided under Section 151 of the unamended Act of 2003.”

In view of the above discussion, the findings recorded by the learned trial Court are modified as noticed above and it is held that the proceedings pursuant to FIR No.23 dated 23.1.2006 are not maintainable. However, it shall be open for the complainant-Department to avail remedy of complaint for prosecution of the respondent-accused.

Revision petition stands disposed off.

CRM-6806-2019

That before the above judgement could be pronounced, this application was filed under Section 482 Cr.P.C. for placing on record copy of the judgements passed in the Civil Suit as well as in the criminal complaints.

It is pleaded in the application that apart from the above, the civil litigation was also pending and the same has been decided in favour of the respondent. At the same time, it is not disputed that the civil litigation pertaining to Plot No.23-B, which is the subject matter in the present criminal revision, stands decided on 30.3.2017 and the first appeal before the appellate Court is pending. It is evident that the judgement and decree in favour of the respondent is yet to attain finality. The other judgements pertaining to the other similar offences by the respondent may not be relevant as far as the adjudication of the issue involved in the present criminal revision petition is concerned.

In view of the above, the material placed on record is not relevant for adjudication for the issue in the present criminal revision. Therefore, the application is dismissed.

April 10, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes

Whether Speaking/Reasoned : Yes