

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

CRM-M No.4535 of 2017 (O&M)

Date of decision: 17.07.2019

Khushi Ram and others

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sushil Bhardwaj, Advocate
for the petitioners.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Rajesh K. Sharma, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for quashing of FIR No.82 dated 24.02.2016 registered under Sections 186, 332, 353, 506 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Gharaunda, District Karnal and all other subsequent proceedings arising therefrom.

Before referring to the facts, it is relevant to note that on 14.02.2017, while issuing notice of motion and staying the proceedings before the trial Court, the following order was passed by this Court:-

“The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR No.82 dated 24.02.2016, under Sections 186, 332, 353 and 506 IPC, registered at Police Station Gharaunda, District Karnal.

Counsel would submit that the FIR had been registered against the petitioners on the basis of an

allegation of having threatened the Sub Divisional Officer of Sub Division Uttar Haryana Bijli Vitran Nigam Limited, Gharaunda and creating hindrance and shifting of a 11 KV line.

Precise argument raised by counsel is that the FIR had been got registered with a mala fide intent. In support of such contention, counsel submits that CWP No.10814 of 2012 had been preferred by Purshotam i.e. father of petitioner No.2 seeking issuance of writ of mandamus for directing the respondents to shift the 11 KV line crossing over certain residential houses in Village Khora Kheri.

Further submitted that in spite of directions having been issued by the Writ Court and the shifting of the line being not done vide order dated 16.11.2015 passed by the Writ Court, the Managing Director of Uttar Haryana Bijli Vitran Nigam Limited was directed to remain present in Court on 21.03.2016. It is argued that since shifting of the line had been directed at the behest of the petitioners party itself, there was no occasion for them to have created any hindrance in the shifting thereof. Further more the facts and circumstances are clear pointer towards the Managing Director being annoyed with the conduct of Purshotam i.e. father of petitioner No.2 and in pursuance thereof the impugned FIR being lodged at the instance of a subordinate official i.e. Sub Divisional Officer concerned with a mala fide intent.

Notice of motion, returnable for 18.04.2017.

Further proceedings shall remain stayed till the next date of hearing.”

Counsel for the petitioners has stated that as per the allegations in the FIR, which was got registered on a complaint given by the S.D.O. of Sub-Division UHBVNL, Gharaunda, District Karnal, addressed to the SHO it is stated that some mischievous persons have

created hindrance in shifting of 11 K.V. line as per the direction issued by this Court dated 16.11.2015 passed in CWP No.10814 of 2012. The order dated 16.11.2015 passed by this Court reads as under:-

“Learned counsel for respondents No.1 to 3 submits that hindrance is being caused by the petitioner with regard to shifting of high tension wires.

It is the contention of learned counsel for the petitioner that he has already deposited the amount as per the estimate given by the respondents but still no action has been taken by the respondents.

Since high tension wires are passing through the residential area, there is possibility of loss of human life. From the date of filing of this writ petition three years have elapsed, no action has been taken by the respondents.

On 09.09.2014 following order was passed by this Court: -

“The counsel appearing on behalf of the 1 st respondent states that the sanction for laying the overhead high tension wire is not being carried through on account of local factions and trouble in the village.

The petitioner's grievance is that in spite of an essential sanctioned site plan, the respondent is not carrying out the works for installation of the overhead high tension wire. I direct suo motu impleadment of State of Haryana represented through the Deputy Commissioner, District Karnal and the SSP Karnal to be made parties. They shall be impleaded respondents No.4 and 5. The petitioner will serve copy of the petitions to the counsel appearing for the State to take appropriate instructions. The 1 st respondent will engage the authorities who are now impleaded and set down a time line before when the installation is done in accordance with the plan already approved.

Adjourned to 27.11.2014.

A photocopy of this order be placed on connected case.”

This Court suo motu impleaded Deputy Commissioner and Superintendent of Police, Karnal as

parties. In spite of that respondents have failed to carry out the work of shifting the overhead high tension wire.

In the peculiar facts and circumstances of the case, it is directed that Chief Engineer concerned shall ensure that shifting of high tension wires is done within two months from the date of receipt of certified copy of this order. In case anybody creates any hindrance in shifting of high tension wires, respondents shall approach Deputy Commissioner and Superintendent of Police, Karnal, who shall extend help for this work.

Learned counsel for respondents No.1 to 3 has shown letters dated 21.11.2014 and 24.11.2014 written to Superintendent of Police and Deputy Commissioner, Karnal, respectively, regarding providing help for shifting of high tension wires. Letters are taken on record. The letters were written in November, 2014. Almost a year has elapsed. It appears that after writing the said letters, respondents No.1 to 3 have slept over the matter. This is the way the department is functioning, which is not appreciable.

In such circumstances, this Court deems it fit and appropriate that Managing Director of the UHBVN Limited should be present in Court on the next date. The tardy functioning of the department is required to be brought to the notice of the State Government. It is made clear that if any human loss occurs due to non-shifting of the high tension wires officials/officers of the department shall be personally liable for that. It appears to be a lame excuse that petitioner is creating hindrance in shifting of the high tension wires as petitioner has already deposited the amount of about ₹ 2.00 lacs suggested by the respondents. Once petitioner has deposited the huge amount there is no reason for him to object to the completion work of shifting the wires.

Adjourned to 21.3.2016.”

Counsel for the petitioners has submitted that the only prayer in this writ petition filed by one Purshotam against the official of UHBVNL was that they be directed to shift 11 K.V. line, crossing over the residential houses in the village as the same was approved by the authorities and its execution is pending since 2011.

Counsel for the petitioners has further submitted that thereafter, the respondents/complainant moved an application before the Writ Court by moving CM No.396 of 2016 in CWP No.10814 of 2012 for recalling the aforesaid order dated 16.11.2015 passed in CWP No.10814 of 2012 and thereafter, this Court on 13.01.2016 passed the following order in CM No.396 of 2016 filed in CWP No.10814 of 2012:-

“Instant application has been moved for recalling the order dated 16.11.2015 passed by this Court in CWP No.10814 of 2012.

I have heard learned counsel for the applicants and perused the record.

This Court passed the order dated keeping in view the order passed by a Co-ordinate Bench (K. Kannan, J.) of this Court on 09.09.2014, which has been reproduced in the order dated 16.11.2015. The order dated 09.09.2014 has never been recalled or sought to be recalled. Only observation made in the order dated 16.11.2015 is that despite deposit of ₹ 2.00 lacs, as suggested by the respondents, work of shifting the wires is not completed. Thus, I do not find any justification to recall the order dated 16.11.2015 passed by this Court.

Dismissed.”

Thereafter, the writ petition i.e. CWP No.19814 of 2012, was finally decided by this Court on 21.03.2016 by passing the following order:-

“In pursuance of order dated 16.11.2015, Sh. Nitin Kumar Yadav, Managing Director, UHBVNL is present in Court and states that order dated 16.11.2015 has been complied with and all the works have been executed at the spot.

On the other hand, learned counsel for the petitioner also states that now no grievance of the petitioner is left to be addressed.

In view of above, instant petition has become infructuous.

Dismissed as infructuous.”

Counsel for the petitioners has submitted that, in fact, the FIR has been registered by the complainant just to cover the delay in compliance of the order dated 16.11.2015 as is clear from the subsequent orders and further to put the liability on some other persons, it has been registered against the petitioners that they had created hindrance in the work of shifting of 11 K.V. line.

Counsel for the petitioners has also submitted that from the bare perusal of the FIR, no offence is made out as the petitioners never created any hindrance in shifting of 11 K.V. line as it was the complainant himself, who was unable to shift the same within the time given by this Court as it is apparent that the complainant moved a miscellaneous application in the aforesaid writ petition even for recalling of the order, which was dismissed.

Counsel for the petitioners has further argued that since on

account of non-compliance of the aforesaid order dated 16.11.2015, later on, even the Managing Director of UHBVNL was directed to remain present in the Court on 21.03.2019 and the petitioners (herein) were themselves asking for shifting of the line, there was no occasion to create any hindrance in shifting the line and the FIR was registered by the complainant just to please his superior officer i.e. the Managing Director who was called in Court to explain delay.

Counsel for the petitioners has relied upon a communication from the complainant to the XEN, Division No.2, UHBVNL, Karnal dated 06.07.2018 on a representation made by the petitioners regarding compounding of the offences in which it has been intimated by the complainant that the work of shifting of 11 K.V. line stands completed and CWP Nos.25541 of 2012 and No.10814 of 2012 are already disposed of, however, the complainant is unable to effect a compromise as per the advise given by the L.R., Panchkula that the offences under Sections 186, 332 and 353 IPC are not compoundable as per Section 320 Cr.P.C.

Reply by way of affidavit of the Deputy Superintendent of Police (Headquarter), Karnal is on record in which it is stated that the case is at the stage of framing of charge. It is further stated that the FIR was registered as the complainant/SDO has given a complaint that the accused persons have created hindrance in shifting of 11 K.V. line in compliance of the direction of this Court.

No separate reply has been filed on behalf of the complainant/respondents No.2 and 3, which show that the complainant is not interested in prosecuting the case against the petitioners.

After hearing the counsel for the parties, I find merit in the present petition for the following reasons:-

(a) CWP No.10814 of 2012 was filed by father of petitioner No.2 Purshotam wherein the direction was given on 16.11.2015 to the complainant to shift the high tension wires and therefore, the petitioners/accused were themselves agitating before this Court for shifting of the 11 K.V. line as it was crossing overhead their houses and, therefore, there was no occasion for them to create a hindrance in shifting of the same.

(b) The action on the part of respondents No.2 and 3 is not bona fide as it is apparent that having failed to implement the said order, the Managing Director of UHBVNL was called in person in the Court and to escape their liability, they have put the same on the petitioners.

It is also apparent that an application was moved for recalling of the order dated 16.11.2015 by the respondents, which was dismissed on 13.01.2016 noticing another order dated 09.09.2014 passed in CWP No.25541 of 2012 filed by one Khushi Ram with a similar prayer that the UHBVNL be directed to set down a time-limit for shifting the high tension wire, the same was dismissed.

Therefore, it is apparent that the delay in shifting the line was on the part of the complainant and to escape

their liability, the present FIR was registered.

(c) Even otherwise, at present none of the party had any grievance as the order dated 16.11.2015, stands duly complied with by UHBVNL and the high tension wires already stands shifted as noticed in the order dated 21.03.2016, dismissing the petition as infructuous and therefore, no litigation is pending between the parties.

(d) Even the complainant has shown its willingness to compound the offence, however, the same was not done on the basis of the opinion of L.R. of the Nigam that since the offence are not compoundable, no compromise can be effected.

In view of the above and considering the fact that the civil litigation has already become infructuous, the complainant has even sought permission to compromise the case with the petitioners, which was however, declined and also in view of the fact that the complainant is left with no other grievance in view of the judgment passed by the Full Bench of this Court in ***“Kulwinder Singh and others vs State of Punjab”***, 2007 (3) RCR (Criminal) 1052, wherein it is held that the High Court has power under Section 482 Cr.P.C. to allow the compounding of non-compoundable offence and quash the prosecution where the High Court feel that the same was required to prevent the abuse of the process of law or otherwise to secure the ends of justice and this power of quashing is not confined to matrimonial disputes alone, accordingly this petition is ***allowed***, the FIR No.82 dated 24.02.2016 registered under Sections 186, 332, 353, 506 IPC at Police

Station Gharaunda, District Karnal and all other subsequent proceedings arising therefrom, are hereby ***quashed*** qua the petitioners.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

17.07.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No