

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

123

CRM-M-2419-2021

Date of decision : 21.01.2021

Amit Kumar

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Aayush Gupta, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

Petitioner-**Amit Kumar** has filed the present petition under Section 482 of the the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of FIR No.62 dated 13.01.2018 registered under Section 135 of the Electricity Act, 2003 in Police Station Anti Power Theft, District Ludhiana (**Annexure P-1**) with all consequential proceedings arising therefrom in view of the compromise dated 23.12.2020 (**Annexure P-3**) effected with respondent No.2-**Punjab State Power Corporation Limited**.

The above-said FIR was registered against the petitioner on written complaint made by Assistant Executive Engineer, PSPCL, Model Town, Ludhiana regarding theft of electricity by the petitioner. The petitioner filed petition for grant of anticipatory bail and during pendency of the petition for grant of anticipatory bail the matter was referred to Mediation and Conciliation Center of this Court. The mediation was successful and with the efforts of the Mediator, the parties compromised the matter in terms of settlement/compromise

(Annexure P-3).

In view of above-said settlement/compromise between the parties, the petitioner has filed the present petition seeking quashing of the above-said FIR.

Notice of motion.

Pursuant to supply of advance copy of the petition, Mr. P.S. Walia, Asstt. AG, Punjab has appeared and accepted notice on behalf of respondent No.1-State.

At this stage, Ms. Abhilaksh Grover Advocate has appeared and accepted notice on behalf of respondent No.2-complainant.

Learned State Counsel and learned Counsel for respondent No.2 have no objection if the FIR is quashed in terms of the compromise.

Learned Counsel for respondent No.2 has also acknowledged that the petitioner has paid the amount agreed upon with interest to respondent No.2 in terms of the compromise/settlement.

I have heard learned Counsel for the petitioner, learned State Counsel and learned Counsel for respondent No.2 and gone through the relevant record.

Section 135 of the Electricity Act, 2003 defines and penalises theft of electricity while Section 152 of the Electricity Act, 2003 makes the same compoundable and lays down the conditions for compounding. Sections 135 and 152 of the Electricity Act, 2003 read as under:-

“135 (Theft of Electricity) :-

(1) Whoever, dishonestly, -

(a) taps, makes or causes to be made any connection

with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier as the case may be; or

- (b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or*
- (c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,*
- (d) uses electricity through a tampered meter; or*
- (e) uses electricity for the purpose other than for which the usage of electricity was authorised,*

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use -

- (i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;*
- (ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:*

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee

or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.

(2) Any officer of the licensee or supplier as the case may be, authorized in this behalf by the State Government may--

- (a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity 2[has been or is being,] used unauthorisedly;*
- (b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, or is being, used for unauthorized use of electricity;*
- (c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.*

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall

be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

Section 152. (Compounding of offences): -

(1) Notwithstanding anything contained in the Code of Criminal Procedure 1973, the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE	
<i>Nature of Service</i>	<i>Rate at which the sum of money for Compounding to be collected per Kilowatt(KW)/Horse Power(HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere(KVA) of contracted demand for High Tension (HT)</i>
<i>(1)</i>	<i>(2)</i>
<i>1. Industrial Service</i>	<i>twenty thousand rupees;</i>
<i>2. Commercial Service</i>	<i>ten thousand rupees;</i>
<i>3. Agricultural Service</i>	<i>two thousand rupees;</i>
<i>4. Other Services</i>	<i>four thousand rupees;</i>

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this

behalf empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.

(4) The Compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer.”

The provisions of Section 152 of the Electricity Act, 2003 are stated to be inapplicable to the petitioner due to registration of number of FIRs against the petitioner and compounding of an offence being permissible only once for any person or consumer.

It is now well settled that the High Court has inherent power to quash the criminal proceedings in non-compoundable cases on the basis of settlement between the parties for securing the ends of justice or to prevent abuse of the process where the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case. Criminal cases having overwhelmingly and predominantly civil character particularly those arising out of commercial transaction or arising out of matrimonial relationship or family dispute can be quashed when the parties have resolved their entire dispute among themselves. However, such power cannot be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape dacoity, etc. which are not private in nature and have a serious impact on society. Similarly, prosecution for offences alleged to have been committed under special enactments like the Prevention of Corruption Act or the offences committed by public servant while working in that capacity cannot be quashed on the basis of compromise between the victim and the

offender. For judicial precedents in this regard, reference may be made to *Kulwinder Singh and others Vs. State of Punjab and others (Punjab and Haryana High Court) : 2007 (3) RCR (Criminal) 1052; Narinder Singh Vs. State of Punjab (Supreme Court) : 2014 (2) RCR (Criminal) 482* and *State of Madhya Pradesh Vs. Laxmi Narayan and others (Supreme Court) : 2019 (2) RCR (Criminal) 255*.

The offence involved in the present case is overwhelmingly and predominantly of private/commercial character and does not have any social impact. The parties have resolved their entire dispute. The compromise has been arrived at between the parties at the initial stage. The compromise will also contribute to peace and harmony in the society. In view of the facts and circumstances of the case, the possibility of conviction of the petitioner is remote and bleak. Continuation of this case will put the petitioner to great oppression and extreme injustice would be caused to the petitioner if the FIR and all consequential proceedings are not quashed.

In view of the above discussion, FIR No.62 dated 13.01.2018 registered under Section 135 of the Electricity Act, 2003 in Police Station Anti Power Theft, District Ludhiana (**Annexure P-1**) is quashed with all consequential proceedings arising therefrom.

The petition is allowed accordingly.

21.01.2021
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(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No