

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.3725 OF 2021**

1. Praksh Ailani
2. Nitin Prakash Ailani

...Petitioners

Versus

1. The State of Maharashtra
2. The Addl. Executive Engineer
Flying squad, MSEDCL, Vashi,
Navi Mumbai.
3. Additional Executive Engineer,
MSEDCL, Ulhasnagar Sub
Division-3
4. Senior Inspector
Ambernath Police Station,
Ambernath
5. Senior Inspector, Central
Police Station, Ulhasnagar-3.

...Respondents

...

Ms Sidhi Taunakaur with Ms Milan Chandnani i/b. Mr. Jaywant S. Chandnani for the Petitioners.
Mr. J.P. Yagnik, APP for Respondent No.2-State.

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

ORDER DATED : 14th JANUARY, 2022.

P.C. :

1. The Petitioners have approached this Court by filing the present Writ Petition under Article 226 of the Constitution of India

and Section 482 of the Code of Criminal Procedure, 1973 praying to quash the FIR No.II-55 of 2018 dated 07/04/2018 registered with Ambernath Police Station on 07/04/2018 for the offences punishable under Sections 135 and 138 of Electricity Act, 2003 and charge sheet filed before the learned Judicial Magistrate, First Class and Jt. Civil Judge, Junior Division, Ulhasnagar.

2. It is the case of the Petitioners that Petitioners are running the business of Electrical at Ulhasnagar and Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) has provided the electric connection under Consumer No.021510835988/0. It is alleged that the officers of Flying Squad of Respondent No.2-MSEDCL conducted inspection of the Petitioners' premises and reported that the electric meter and CT of the Petitioners' premises was tampered by installing a remote circuit in it, due to which the meter was running slow and thereby theft has been committed by the Petitioners. Accordingly, the officers of the Flying Squad seized and sealed.

3. Accordingly, the present petition has been filed for quashing of the FIR and charge sheet in question.

4. We have heard the learned counsel for the respective parties.

5. Learned counsel for the Petitioners submits that since last 20 years the electric connection has been provided to the premises of the Petitioners. However, there was no complaint in last 20 years. It is further submitted that a year back when the routine inspection was carried out, it was assessed that the meter was running properly.

5. It is argued that without disclosing the identification by the Officers of the Flying Squad, the meter was removed and the power was cut without assigning any reason and providing any document like seizure panchanama. It is further argued that without following due process, the electric supply was disconnected and the electric meter was removed.

6. It is submitted that after seizure of the meter nothing has been found in the electric meter or CT of the Petitioners and no procedure was followed while conducting the search as per Section

100 of Cr.P.C. Hence, the whole process of inspection vitiates.

7. It is submitted that though the videography was carried out at the time of inspection, the same has not been provided to them though a demand for the same was made.

8. Learned counsel for the Petitioners has drawn attention of this Court to the panchanama carried out by Respondent No.2. One panchanama relates to the Petitioners whereas second panchanama relates to some other premises prepared on the same day. The learned counsel for the Petitioners by drawing attention of this Court to the time recorded on both the panchanamas, submits that for the panchas it was not possible to reach the other premises after carrying out the inspection at the premises of Petitioners, within the time shown in the another panchanama.

9. It is also alleged that the investigating agency has tampered the CT and a false case has been registered against the Petitioners though the Petitioners are not involved in the alleged offences. Accordingly, the Petitioners pray for quashing of the FIR.

10. On the other hand, Mr. J.P. Yagnik, learned APP for Respondents-State submits that the procedure was properly followed. It is submitted that, the investigating agency has filed charge sheet on 09/04/2019. It is further submitted that, from bare reading of the FIR, it cannot be said that the offences punishable under Sections 135 and 138 of the Act of 2003, do not attract. Hence, this Court may not interfere in this matter.

11. On considering the rival contentions of the parties, we have gone through the FIR and charge sheet. From the record it is clear that on 28/03/2018 the inspection of the premises of the Petitioners was carried out by the Flying Squad. Thereupon, it was reported that electric meter and CT of the Petitioners premises was tampered by installing a remote circuit in the meter. It is further alleged that, the Petitioners have committed theft.

12. Hon'ble Supreme Court in case of *State of Haryana vs. Bhajan Lal*,¹ after considering the various judgments on the law relating to quashing of the FIR has held thus:-

¹ 1992 Supp (1) SCC 335

“102.....

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or

where there is a specific provision in [the Code](#) or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13. In the teeth of the above referred well settled principles of law, we now consider the contentions raised by both the parties.

14. The contention of the Petitioners that last year when the regular inspection was carried out in the premises of the Petitioners no such tampering was noticed by the Department. The said fact will not help the Petitioners in this matter and on the basis of last inspection report, which was carried out a year back, it cannot be said that no tampering was made by the Petitioners after last inspection. Accordingly, we cannot accept the said contention of the Petitioners for the purpose of quashing of the FIR.

15. As regards the panchanamas placed on record to show that time difference between both the panchanamas, after going through

both the panchanamas, which are conducted in the same area of Ulhasnagar and as there was a sufficient time gap between both the panchanamas we cannot accept the contention of the Petitioners and accordingly, it is rejected.

16. The allegations made by the Petitioners that the meter and CT was tampered by the investigating agency, cannot be considered as it is a matter of evidence.

17. As regards, the case of the Petitioners that the videography carried out during the inspection has not been provided, the said argument is not sufficient for quashing of the FIR. If such videography is not provided to the Petitioners, the Petitioners have remedies available to obtain the said videography.

18. After considering the contentions raised by the Petitioners and dealt by this Court hereinabove, it is crystal clear that none of the grounds on which the FIR can be quashed, has been pleaded or argued. In that view of the matter, according to us no ground is available for the Petitioners to seek quashing of the FIR in this matter.

19. As such, we pass the following order:-

ORDER

The petition is dismissed. No order as to costs.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)

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