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

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CRM-M-24514-2021

Date of decision : 07.10.2023

Mukesh Kumar

..... Petitioner

versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Ms. Mehak Sawhey, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana
assisted by ASI Surender Singh.

Mr. Deepak Sabharwal, Advocate
for respondent No.2.

PANKAJ JAIN, J. (Oral)

1. Prayer is for quashing of FIR No.0580 dated 12.11.2020, registered for offences punishable under Section 136 of Indian Electricity (Supply) Act, 2003 and Section 427 of IPC, 1860 at Police Station Kundli, District Sonipat.

2. Petitioner is a Government approved labour work Contractor engaged in executing work at 'OP' Circle, Sonipat, UHBVN under the scheme approved by Chief Engineer, UHBVN, Panchkula and was authorized to work at the site on instructions of officials of the respondent-Nigam.

3. Petitioner was booked in aforementioned FIR, contents of which read as under:-

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“TO THE SHO POLICE STATION RAI SUB:-
REGARDING LODGING OF F.I.R AGAINST SH.
MUKESH KUMAR ELECTRICAL CONTRACTOR. IN
THIS CONNECTION IT IS INTIMATED THAT,
SH.MUKESH KUMAR CONTRACTOR WAS WORKING
IN THE S/DIVN RAI. DURING THE MONTH OF JULY
2019 HE ILLEGALLY HAD SHIFTED THE LT LINE OF
100 KVA T/F SOP TO ASHOK WALA IN VILLAGE
TONKI MANOLI. NO WORK ORDER WAS ISSUED TO
HIM FOR SHIFTING OF LINE. DUE TO ILLEGAL
SHIFTING OF ELECTRICAL LINE NIGAM HAS
OCCURRED A LOSS OF RS. 253000/- AS HIGHER
AUTHORITY WAS INFORMED TO TAKE ACTION
AGAINST THE CONTRACTOR AND HIGHER
AUTHORITY DIRECTED TO THIS OFFICE VIDE THEIR
MEMO NO. 192/EST-GENL DATED 2/11/2020 (COPY
ATTACHED AS ANNEXURE-'A') FOR LODGING FIR
AND SUPPLY THE COPY OF FIR FOR TAKING
ACTION AGAINST THE CONTRACTOR. SO, IT IS
REQUESTED TO LODGE THE FIR AGAINST
SH.MUKESH KUMAR ELECTRICAL CONTRACTOR
FOR ILLEGAL SHIFTING AND ALSO SUPPLY THE
COPY OF FIR, SO THAT THE FURTHER ACTION
COULD BE TAKEN ACCORDINGLY.”

4. The gravamen of the allegation levelled against the petitioner is thus of having shifted the line without work order.

5. Counsel for the petitioner while assailing registration of FIR submits that the status of the petitioner as a working Contractor is not in dispute. Allegation does not relate to misappropriation of any stock from the store. The allegation is with respect to execution of work without work order, which has no criminal contours. It has been further contended that on 31.12.2020, Superintending Engineer, OPC Circle, UHBVN, Sonipat issued a show cause notice to the petitioner seeking explanation as to why he should not be blacklisted on account

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of the aforesaid misadventure. A detailed enquiry was conducted by XEN, (OP) Division, UHBVN, Gohana and XEN (OP) S/U Division, UHBVN, Sonipat. Report has been placed on record as Annexure P-3. She submits that the conclusions and the recommendations would show that admittedly no financial loss has been caused to the Nigam and rather the impression with respect to execution of work without there being a work order by the petitioner also stands dispelled. It has been thus contended that once in the departmental enquiry, the petitioner has been fully exonerated on the same allegations. The criminal proceedings cannot be allowed to continue on the same set of allegations as the standard of proof in the criminal proceedings is much strict. Reliance is being placed upon orders passed by Apex Court in the case of *P.S. Rajya vs. State of Bihar (1996) 9 SCC 1* and *Rajbir Singh Gulia vs. State of Haryana and others 2009 SCC online P&H 649*.

6. Separate replies have been filed on behalf of the respondents. The respondents have reiterated the allegation in the FIR claiming that the petitioner being Contractor was required to work on the instructions of the concerned officials, but he having worked on his own and shifted the line in collusion with consumer namely Ravinder Gupta, caused financial loss to the Nigam and is thus liable to be prosecuted.

7. I have heard rival contention made by the parties and have gone through the records of the case.

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8. In order to appreciate the arguments raised by the counsel representing the parties, it will be apt to peruse Section 136 of the Electricity Act and Section 427 of IPC:-

136 of the Electricity Act (Theft of electric lines and materials): --- (1) Whoever, dishonestly --

(a) cuts or removes or takes away or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located including during transportation, without the consent of the licensee or the owner, as the case may be, whether or not the act is done for profit or gain; or

(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or

(c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain, is said to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) If a person, having been convicted of an offence punishable under sub-section (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which

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may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.

427 of IPC - Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.”

9. The question is whether the case being pleaded by the petitioner falls within the parameters of exercising jurisdiction under Section 482 of Cr.P.C. for quashing of criminal proceedings as laid down by Apex Court in the case of **State of Haryana and others vs. Ch. Bhajan Lal and others reported as 1992 SCC (Cri) 426**. The relevant part reads as under:-

“107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if

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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 FIR 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 noncognizable 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

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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 mala fide 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.”

10. In order to constitute offence punishable under Section 136 of 2003 Act, the primary requirement is a dishonest action on part of the accused which falls within the ambit of three eventualities as contemplated under Section 136(1)(a) to (c). Likewise, in order to constitute offence punishable under Section 427 of the IPC, the ingredient is commission of mischief causing loss or damage to the amount of Rs.50 or upwards. Mischief is enumerated under Section 425 of the Penal Code which reads as under:-

“Mischief - Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

11. To constitute mischief, there must be:-

- (a) intent to cause wrongful loss or damage to the public or to any person;
- (b) or knowledge that one is likely to cause wrongful loss or damage to the public or to any person;
- (c) causing destruction of any property or change in any property which destroys or diminishes its value

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or utility, or affects it injuriously.

12. Para 6 of the petition filed by the petitioner reads as under:-

“6. That in regard to show cause notice, on the orders of the SE (OP) Circle UHBVN Sonapat, a detailed enquiry was conducted by the XEN (OP) Divn., UHBVN, Gohana And Xen (OP) S/U Divn., UHBVN, Sonipat, copy whereof is annexed herewith as **Annexure P-3**. The relevant extract from the observation made by the Inquiry team read as under :-

"a) No Financial losses incurred to the Nigam, In Fact, Nigam has received wrongful financial gain at the cost of the consumer. The work of shifting of LT Line at village Manoli Toki was already completed at site using old material and with only 8 No. new poles of UHBVN installed before sanction of the Estimate No. SC-550/19-20. This estimate could not be said on the actual basis because even on the date of inspection of the Site by the undersigned i.e. on 20.01.2021, only 8 No. new poles were there and all other material viz. conductor and poles were old. As per the version of SDO, neither any material drawn for this estimate nor any amount booked against the estimate. However, it is a matter of fact that Rs. 309324/- was got deposited from the consumer, while no work was actually carried out site as per this estimate by using all the new material as per the provision of this estimate, which is not in order.

b) The main mistake is done by HDM of City Division UHBVN, Sonapat who returned the original estimate of Rs. 76281/- (corrected by him to Rs. 80341/-) on flimsy ground. Had this estimate sanctioned, the work would have been completed without any hue and cry and the whole incident could have been avoided.

Xxxxxx

g) As regards unauthorized work carried out by Sh. Mukesh Sharma without work order is concerned, it has been observed by the committee that as a general practice in the S/ Division, written work orders are not issued

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timely and work is allotted verbally most of the time. Work orders are issued at later stage only to complete paper formalities for passing the bills. This is a lapse in the existing system. As 3 No. estimates (RSD-169/19-20 for Rs. 19324/-, RSD-170/19-20 for Rs. 19954/ and RSD-171 /19-20 for Rs. 16767/-) were duly sanctioned by the SDO and work was found carried out largely according to these estimates, therefore, there is nothing to establish that contractor carried out the work at his own sweet will unauthorizedly without involvement of Nigam functionaries.

h) The SCN has been issued on the basis of the Xen/Op City Division UHBVN, Sonapat memo No. 183/Est-Genl dated 21.10.2020 which lacks substance and simply pushing for blacklisting on egoism instead of highlighting any exceptional or glaring violations. The return of the initial estimate of Rs. 76281/- by the office of the Xen/Op City Divn UHBVN, Sonapat which led to the whole mess has not been touched upon. It takes two to quarrel. The lapses at the part of Nigam functionaries could not be overlooked. The FIR lodged by SDO/Rai against the contractor is sub-judice. There are allegations and counter allegations from both sides. Therefore, no comments can be made on FIR at this stage.

The perusal of the findings recorded by enquiry team would reveal that no financial loss is caused to the Nigam and infact Nigam has received wrongful financial gain at the cost of the consumer. Further in regard to alleged unauthorized shift of the LT line of 100 KVA T/F SOP to the Ashok Wala in Village Tooki Manoli without any work order issued to Petitioner, it has been observed by the Inquiry officer that as a general practice in the S/Division, written work orders are not issued timely and work is allotted verbally most of the time and in this matter 3 no. of estimates (RSD-169/19-20 for Rs. 19324/-, RSD-170/19-20 for Rs. 19954/- and RSD- 171/19-20 for Rs. 16767/-) were

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duly sanctioned by SDO and work carried out largely according to these estimates, therefore, there is nothing to establish that the work carried out by Petitioner is out of his own free will without involvement of Nigam. For the perusal of this Hon'ble court the copy of the estimates on basis of which the work of shifting the LT line of 100 KVA T/F SOP to the Ashok Wala in Village Tonki Manoli was done are annexed herewith as **Annexure P-4.**”

13. Reply thereto by respondent No.2-Department reads as under:-

“6. That the contents of para No.6 of the petition as stated are matter of record hence needs no reply.”

14. Apart from that, in the enquiry conducted by the Department, as regards unauthorized work alleged to have been carried out by the petitioner, it has been observed by the Committee that “as a general practice in the Sub Division, written work orders are not issued timely and work is allotted verbally most of the time. Work orders are issued at later stage, only to complete paper formalities for passing the bills”. It has been admitted candidly in the enquiry proceedings that it is a lapse in the existing system.

15. Following these observations, it was concluded that there is nothing to establish that the Contractor carried out the work at his own sweet will unauthorizedly without intention of Nigam functionaries.

16. On the specific query being asked, Mr. Sabharwal submits that he is not in a position to dispute the aforesaid factual position and he does not deny that the aforesaid enquiry report stands accepted.

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17. In view of above, this Court does not find that any dishonest action can be attributed to the petitioner to constitute offence punishable under Section 136 of Indian Electricity (Supply) Act. Likewise, loss of property/loss/damage to public or destruction of any property or change in any property which leads to destroying or diminishes its value or utility or affecting it injuriously is not made out against the petitioner. Thus, the case of the petitioner falls well within the parameters laid down by Supreme Court in the case of *Bhajan Lal (supra)*.

18. Consequently, the present petition is allowed. FIR No.0580 dated 12.11.2020, registered for offences punishable under Section 136 of Indian Electricity (Supply) Act, 2003 and Section 427 of IPC, 1860 is hereby ordered to be quashed.

(PANKAJ JAIN)
JUDGE

07.10.2023

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No