

251 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25017-2022

Date of Reserve:04.07.2023

Date of Decision:16.08.2023

Sunny Bansal and Anr.

...Petitioners

Vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Divij Dutt, Advocate for the petitioners.

Mr. Mohit Chaudhary, AAG, Punjab.

N.S.Shekhawat J.

1. The petitioners have filed the present petition under Section 482 Cr. PC with a prayer to quash FIR No.450 dated 16.05.2016(P/1), under Section 135 of the Electricity Act, 2003, registered at Police Station Anti Power Theft (APT), Bhatinda, District Bhatinda and all subsequent proceedings emanating from the said FIR.

2. The FIR in the present case was registered on the basis of the complaint moved by SDO, Sub Division, PSPCL, Dabwali to Inspector, Anti Power Theft, Police Station, PSPCL, District Bhatinda regarding the power theft. As per the complainant, the electricity connection bearing account No. 3-M13/690 of Sushil Bansal son of Tilak Raj Bansal, Panchvati Palace, Village Doomwali, District Bhatinda, was disconnected permanently on the basis of the report submitted by Punjab Pollution Control Board, Bhatinda. The inspection of this palace was conducted on 26.04.2016 by SDO, Dabwali and it was found that the consumer had directly connected the load of his palace from the LT

transformer of the department through approximately 20/25 meters long black colour PVC 16 MM wire and it was a case of electricity theft. The PVC wire, being used in the power theft at the spot was taken into possession after sealing the same. A notice was issued to the consumer to deposit a sum of Rs. 6,67,936/- as compensation and Rs.1,35,000/- as compounding fee under LDLF. A request was made to register the FIR under Section 135 of the Electricity Act, 2003 against Sushil Bansal, petitioner No.2. With these broad allegations, the FIR was registered in the present case on 16.05.2016 under Section 135 of the Electricity Act, 2003.

3. At the very outset, learned senior counsel appearing on behalf of the petitioner submits that the FIR in the present case was registered on 16.05.2016 and till date the final report of investigation under Section 173 Cr. PC has not been presented and in view of the bar contained in Section 468 Cr.PC, the cognizance of the offence cannot be taken against the petitioners, at this stage. Apart from that, learned counsel for the petitioners also submit that Sunny Bansal, petitioner No.1 is the owner of the Panchvati Marriage Palace, village Doomwali, District Bhatinda and the petitioner No.2 is father of petitioner No.1 and petitioner No.2 has been falsely involved in the present case.

4. A reply has been filed by way of an affidavit of Deputy Superintendent of Police, Vigilance and Security, PSPCL, on behalf of the respondent-State. Learned State counsel submits that in the present case, the petitioner No.1 had not joined the investigation and he had joined the investigation with the IO on 09.02.2022 in compliance of the order passed by Additional Sessions judge, Bhatinda. Learned counsel further submits that the

investigation has been concluded and the challan has been prepared and after getting the challan scrutinized from the learned Public Prosecutor, the challan against the petitioners/accused shall be presented before the competent Court of law. Learned counsel further submits that there was no delay on the part of the State of Punjab and in view of the provisions envisaged under Section 473 Cr. P.C., the delay in presentation of challan can be condoned as the delay had been properly explained and it would be in the interest of justice to condone the delay.

5. I have heard learned counsel for the parties and with their able assistance; I have perused the record carefully.

6. The relevant extract of Section 135 of the Electricity Act has been reproduce below for ready reference:-

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;-

(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;- or

(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 the 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 provided that any artificial means or means not authorised 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.

Apart from that, the main contention raised by learned senior counsel appearing on behalf of the petitioners is based on Section 468 and 469 Cr. PC and the same are reproduced below;-

468. Bar to taking cognizance after lapse of the period of limitation:-

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in Sub-Section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

- (a) six months, if the offence is punishable with fine only;*
- (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
- (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*

(3) For the purposes of this Section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

469. Commencement of the period of limitation-

(1) The period of limitation, in relation to an offender, shall commence,-

(a) on the date of the offence:- or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police making investigation into the offence, which is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

7. From a bare perusal of the above referred provisions of law, it is apparent that where an offence is punishable for a sentence of more than one year, but not more than three years, the limitation prescribed under Section 468 Cr.PC for taking cognizance of the same is 03 years. A bar of limitation against taking cognizance has been held to be mandatory through various

pronouncements of the Hon'ble Supreme Court as well as this Court. The object that the statutory provision seeks to subserve in consonance with the concept of fairness of trial as enshrined under Article 21 of the Constitution of India. Chapter XXXVI no where vests the Government with the power to allow institution of prosecution after the expiry of the statutory period of limitation. While considering the said provisions in the light of the facts of the instant case, period of limitation in relation to the offence would start running from 26.04.2016 i.e the date of commission of offence and accordingly, the period of limitation to take cognizance would come to end on 26.04.2019. Even a period of more than 07 years as elapsed since the registration of the FIR in the present case, still as per the status report submitted by State of Punjab and the final report under Section 173 Cr.PC is yet to be presented. In the present case, the bar under Section 468 Cr.PC would operate against a Court to take cognizance of the offence and there is no reason to condone the delay under Section 473 Cr. PC. Even in the reply, no special or specific reason has been mentioned by the learned State counsel, which would justify the condonation of delay, by invoking the powers under Section 473 Cr.PC.

8. The Hon'ble Supreme Court has held in the matter of **Vakil Prasad Singh Vs. State of Bihar 2009 (3) SCC 355, as follows:-**

18. Time and again this Court has emphasized the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of the Cr.P.C. (In particular, Sections 197, 173, 309, 437 (6) and 468 etc.) and the constitutional protection enshrined in Article 21 of the Constitution. Inspired by the broad sweep and content of Article 21 as interpreted by a seven-Judge

Bench of this Court in Maneka Gandhi Vs. Union of India & Anr. (1978) 1 SCC 248, in Hussainara Khatoon & Ors. Vs. Home Secretary, State of Bihar (1980) 1 SCC 81, this Court had observed that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be 'reasonable, fair and just'; and therefrom flows, without doubt, the right to speedy trial. It was also observed that no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. The Court clarified that speedy trial means (1978) 1 SCC 248 (1980) 1 SCC 81 reasonably expeditious trial which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

19. The exposition of Article 21 in Hussainara Khatoon's case (supra) was exhaustively considered afresh by the Constitution Bench in Abdul Rehman Antulay & Ors. Vs. R.S. Nayak & Anr. (1992) 1 SCC 225. Referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines. For the sake of brevity, we do not propose to reproduce all the said propositions

and it would suffice to note the gist thereof. These are: (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) in every case where the speedy trial is alleged to have been infringed, the first question to be put and answered is -- who is responsible for the delay?; (iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on--what is called, (1992) 1 SCC 225 the systemic delays; (v) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case; (vi) ultimately, the court has to balance and weigh several relevant factors--'balancing test' or 'balancing process'--and determine in each case whether the right to speedy trial has been denied; (vii) Ordinarily speaking, where the court comes to a conclusion that right to speedy trial of an accused has been infringed the charges

or the conviction, as the case may be, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial; (viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint; (ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis.

24. It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to

perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case.

25. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial.

26. Tested on the touchstone of the broad principles enumerated above, we are convinced that in the present case appellant's constitutional right recognised under Article 21 of the Constitution stands violated.'

9. It has also been held by the Hon'ble Supreme Court in the matter of **State of Punjab Vs. Sarwan Singh, 1981, 3 SCC, 34** as follows:-

(3) xxxx

In the instant case as the charge-sheet clearly mentions that the offence was committed on August,22, 1972, the bar of limitation contained in Section 468 (2) Cr.PC clearly applies and the prosecution, therefore, is clearly barred by limitation. Even assuming that so far as, the offender is concerned, the commission of the offence came to knowledge of the officer concerned, it would

be so according to charge-sheet on January 5, 1973, the date when the audit report was made, Even if this extreme position is accepted, the prosecution would still be barred by limitation under Section 469 (1) (b) of the Code of Criminal Procedure, 1973. Counsel for the State of Punjab, was unable to assail the point of law delivered by the High Court regarding the interpretation of Section 468. The object of criminal Procedure Code in putting a bar of limitation on prosecutions was clearly to prevent the parties from filing cases after a long time, as a result of which material evidence may disappear and also to prevent abuse of the process of the court by filing vexatious and belated prosecutions must abide by the letter of law or take the risk of the prosecution falling on the ground of limitation. The prosecution against the respondent being barred by limitation the conviction long after the date of the offence. The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India, it is therefore, of the utmost importance that any prosecution, whether by the State or a private complainant as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent as also the entire proceedings culminating in the conviction of the respondent herein become non est. applicability of Section 468 of the Code of Criminal Procedure has been correctly decided by the Punjab and Haryana High Court. This Court has also taken the same view in a number of

decisions. The result is that the appeal fails and is dismissed. The respondent will now be discharged from his bail bonds.

10. In view of the above discussion, and various authoritative pronouncements by the Hon’ble Supreme Court the present petition succeeds and the FIR No.450 dated 16.05.2016(P/1), under Section 135 of the Electricity Act, 2003, registered at Police Station Anti Power Theft (APT), Bhatinda, District Bhatinda quashed alongwith all consequential proceedings arising therefrom are hereby quashed qua the petitioners.

16.08.2023
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(N.S.SHEKHAWAT)
JUDGE

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