

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.2726 of 2019
Date of Decision : 14.02.2024

Ramesh Kumar

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Rajbir, Advocate for
Mr. Sanjeev Goyal, Advocate for the petitioner.

Mr. Jasjit Singh, Dy. Advocate General, Punjab.

Mr. Parminder Singh, Advocate
for respondents No.3 to 5.

PANKAJ JAIN, J. (Oral)

By way of present petition petitioner seeks quashing of FIR No.945 dated 22.11.2017 registered for the offence punishable under Section 135 of Electricity Act, 2003, at Police Station Patiala and all proceedings subsequent thereto.

2. Petitioner is a consumer of energy with respondent No.3. As per the case of the petitioner on the night of 26th of June, 2017 some unknown persons broke electricity meter installed outside the house of the petitioner to measure the energy consumption of the house of the petitioner w.r.t. electricity connection bearing account No.PB-76-588.

The brokage of meter was immediately reported to the Complaint

Centre. Officials from the office of Sub Divisional Officer, Punjab State Power Corporation Limited, City Sub Division Sangrur inspected the spot and advised the petitioner to move an application regarding change of electricity meter. On 27th of June, 2017 itself, the petitioner moved an application for change of meter. The same was removed only on 6th of September, 2017. Old damaged meter bearing No.120105 was removed from the spot and a new meter bearing Serial No.2080684 was installed. At the time of replacement of meter nothing wrong was found by the officials. Neither the meter was sealed nor the petitioner was served with any notice. Signatures of the petitioner were obtained on the memo describing 'Job order for device replacement'. The petitioner transferred the residential premises in favour of his son vide registered sale deed dated 27th of October, 2016. As a consequence thereof son of the petitioner moved an application dated 17th of September, 2017 seeking transfer of electricity connection in his name. On 27th of October, 2017 the police raided the house of the petitioner and it is only then that the petitioner came to know that the impugned FIR has been registered against him alleging that the meter removed from the premises of the petitioner was found to be tampered by Assistant Executive Engineer Enforcement, Sangrur on 7th of November, 2017 resulting in registration of FIR *qua* power theft against the petitioner under Section 135 of the Electricity Act.

3. Counsel for the petitioner submits that the electricity meter was removed from the premises of the petitioner on 6th of September, 2017 after he reported damage to the same on the night of 26th of June, 2017. The meter was removed by the officials of the respondent Corporation. Nothing suspicious was found by them. Now it is being claimed that on 7th of November, 2017, Enforcement Officials on checking the meter found the same was tampered and thus it is a case of theft of electricity which is nothing but an abuse of process of law. He submits that there are instructions prescribed under Electricity Supply Manual w.r.t. removal of defective meters. The same prescribe that the meter needs to be sealed at the time it is being removed from the premises of the consumer. The meter also has to be tested in the presence of the consumer or his representative. In the absence of such procedure having been followed, the petitioner cannot be alleged to be guilty for offence punishable under Section 135 of the Electricity Act. It is being contended by counsel that from September till November, unsealed meter remained in the custody of the officials of the Corporation and thus tampering, if any, found on the testing conducted on 7th of November, 2017 that too in the absence of the petitioner, cannot be relied upon to drive home guilt against the petitioner. Reliance is being placed upon the various judgments passed by Coordinate Benches of this Court in **Harbans Singh vs. Punjab State**

Power Corporation Limited and others, 2017(4) Law Herald 3210, Punjab State Power Corporation Ltd. and others vs. M/s Dashmesh Gram Udyog Samiti, District Moga, 2018(2) Law Herald 1311, UHBVNL and others vs. Brijesh Kumar Garg, 2009(2) R.C.R. (Civil) 799, The S.D.O., Op. Sub. Div. Dakshin Haryana Bijli Vitran Nigam and another vs. Tech Plast India, 2016(1) R.C.R. (Civil) 215 and that passed by Division Bench of this Court in the case of M/s Tripuati Industries vs. Punjab State Electricity Board, 2000(1) R.C.R.(Civil) 681.

4. Per contra, Mr. Parminder Singh, counsel representing the respondent/Corporation submits that on testing body of the meter was found to have been tampered intentionally and thus offence punishable under Section 135 of the Electricity Act is fully attracted and thus it is not a case for quashing of the FIR invoking power under Section 482 of the Code. He submits that FIR has been rightly lodged after the meter was found dead and that too intentionally. Thus, the FIR against the petitioner cannot be quashed apart from compounding the offence that too on depositing of the compounding charges by the petitioner.

5. I have heard counsel for the parties and have gone through records of the case carefully.

6. Facts are not much in dispute. The issue primarily here is that: *'in the absence of sealing of meter as prescribed under the*

Electricity Supply Manual, can the petitioner be tried for offence punishable under Section 135 of the 2003 Act?’

7. On 1st of February, 2024 respondents No.3 to 5 were directed to file affidavit of the concerned officer to specify whether the meter was sealed on the day it was removed from the premises of the petitioner or not.

8. Affidavit of Er. Varinder Deepak Additional Superintending Engineer, Distribution Division, Sangrur has been filed. The same is taken on record. Para 3 thereof, reads as under:

“3. That the office of deponent had visited the premises of the petitioner on 06.09.2017 for changing the damaged/dead meter. The Office of deponent removed the old meter from the spot and installed new electric meter at the spot. As per office record of the office of deponent, the old damaged meter was not packed in the card board box and no paper seal and other seal was affixed on it at the time of its removal as there was no suspicion regarding any theft at that time. As per clause 54.6.2 of Electricity Supply Instruction Manual 2018, only such meters are packed in the card board box where theft of energy is suspected. However, it is submitted that there was no interest of any individual of causing any loss to the petitioner.

9. Under Section 50 of 2003 Act, Electricity Supply code has been prescribed and is statutory in nature. Section 50 of the 2003 Act reads as under:

“50. **The Electricity supply code.**—The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges,

disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.]”

10. Electricity Supply Instruction Manual which is part of Electricity Supply Code, prescribes procedure for replacement of meter/meter equipment and the same reads as under:

“54.6.6 Defective/inoperative meter

54.6.2 All the meters removed against MCO shall be first checked by concerned JE./AAE and only such meters shall be packed in cardboard box where theft of energy is suspected. Cardboard boxes shall be sealed and duly signed by concerned JE/AAE and the consumer /representative of the consumer. Testing of such meters shall be done in the presence of the consumer or his representative. In case the consumer refuses to sign the meter test results / report such meter shall be kept sealed in the DS Sub-Division till final disposal of the case. In case of meters where theft of energy is not suspected by JE and the meter is sent to ME Lab without packing if theft of energy is detected later on pertaining to such meter then JE concerned shall be held responsible.”

11. From the bare reading of aforesaid provision, it is evident that procedure prescribed is mandatory and was required to be followed. In the present case, on the day the meter was removed from the premises, the concerned official was required to seal the meter in a

cardboard box. Respondents were further required to test such meter in presence of consumer or his representative i.e. the petitioner..

12. Admittedly, the procedure prescribed has not been followed. Evidently the meter remained in the custody of the officials for about two months in an unsealed condition. Even at the time of testing, the petitioner was not called to ascertain and verify whether the meter is same which was removed from his premises.

13. In view of above, this Court finds that the proceedings against the petitioner for offence punishable under Section 135 of the Electricity Act are abuse of process of law when the authorities faulted on the procedure and remained in possession of an unsealed equipment for two months. The same cannot be allowed to continue.

14. Resultantly, the present petition is allowed. FIR No.945 dated 22.11.2017 registered against the petitioner for the offence punishable under Section 135 of Electricity Act, 2003, at Police Station Patiala is ordered to be quashed.

February 14, 2024		(Pankaj Jain)
Dpr		Judge
	Whether speaking/reasoned :	Yes
	Whether reportable :	Yes