



IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

206

CRM-M-42464-2018
Date of Decision: 03.12.2024

VED PARKASH

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Singh, Advocate
for Petitioner.

Mr. B.S.VIRK, Sr DAG, Haryana.

Mr. Pawan Girdhar, Advocate with
Ms. Manju Goyal, Advocate for
complainant.

SANDEEP MOUDGIL, J

1. This is a petition filed under Section 482 Cr.P.C. with a prayer to quash FIR No.720 dated 10.03.2018, Annexure P-1, under Sections 135, 138, 151 of the Indian Electricity (Supply) Act, 2003, registered at Police Station I & P PS Karnal, District Karnal, with all its consequential proceedings arising therefrom, and also to stay the proceedings before the learned court below.
2. It is contended by the learned counsel for the petitioner that no offence is made out against the petitioner and as such, the petitioner has been falsely implicated in the present case. The petitioner was falsely implicated by the officials of Electricity Department earlier also for the same set of allegations i.e. theft of electricity and had got lodged FIR No.2426 dated



24.08.2016 under Section 135/152 of Electricity Act and the figure on account of theft of electricity was Rs.20,654/-, although the petitioner had not committed any offence of theft of electricity and had been paying his electricity bills regularly. However, instead of raising any dispute and wriggle out of complications of FIR, petitioner decided to pay the said amount and deposited the said amount under protest. The false implication of the petitioner at that time was on account of refusal of the petitioner to accept the illegitimate demand of bribe of the officials of Electricity Department. The petitioner had informed the higher officials of the department vide complaint, Annexure P-2, but no avail. Thereafter, petitioner filed Civil Suit (Suit No.394/16 dated 18.11.2016) for declaration, mandatory injunction with consequential relief of permanent injunction wherein Rajender Singh, the Commercial Assistant of SDO appeared as RW-1 who during his cross-examination, Annexure P-3, had admitted that the petitioner is paying all of his electricity bills regularly and has never been a defaulter in paying the electricity bills. He also admitted the mistakes of electricity department in meter readings while issuing the bills and that the petitioner has moved an application for correction in electricity bills. The civil suit filed by the petitioner was decreed by the learned Civil Court vide judgment and decree dated 13.03.2018, Annexure P-4, and the notices issued by the electricity department amounting to Rs.14,654/- were declared null and void and the electricity department was restrained from disconnecting the electricity connection.

3. It is further contended that now again the petitioner has been falsely implicated in this case as he has refused to meet the continuous demand



of bribe of one lineman (Manish Kumar) and petitioner made complaint against him. It was also admitted by the above stated witness (RW-1) in his statement that several officials of their department have already been caught red-handed while taking bribe. The mala fides of the officials is evident from the fact that they allegedly issued demand notice amounting to Rs.17,435/- against the petitioner on 09.03.2018 and on the same day, they recommended the initiation of police action against the petitioner, without affording opportunity to reply to the demand notice by the petitioner.

4. It is also urged on behalf of the petitioner that the petitioner has challenged the demand notice amounting to Rs.17,435/- before the court of learned Civil Judge, Junior Division, Karnal, in Civil Suit No.531/18 and vide order dated 19.03.2018, Annexure P-5, the Hon'ble Court not only stayed the impugned notice but also stayed the disconnection of the electricity meter of the petitioner. The learned Civil Court has observed that the electricity meter was defective and further observed to refund the amount recovered from the petitioner. In this way, the petitioner has not made any theft of electricity, as alleged. As such, criminal prosecution of the petitioner by the department is absolutely illegal and improper and against the principles of natural justice, therefore, the present FIR, Annexure P-1, is liable to be quashed.

5. On the other hand, learned State counsel has urged that State has filed its reply by way of affidavit of Deputy Superintendent of Police, HBPNL, Karnal. He has further submitted that FIR has been registered on the complaint of SDO, Sub Division Gharaunda, against the petitioner to the effect that a team of SDO, JEs and other officials of the electricity department had checked the consumer premises of consumer named Ved Parkash s/o Jiya Lal



and it was found that the consumer has been indulging in cognizable offence of theft of electricity under Section 135 of Electricity Act (Amendment 2007) and thereby caused financial loss of Rs.17435/- to the Nigam. After completion of investigation, final charge sheet under Section 173(2) of Cr.P.C. was prepared and filed before the Hon'ble Court on 05.09.2018. Charges have already been framed by the Hon'ble Court vide order dated 04.10.2018 and the case is now fixed for prosecution evidence. As such, the present petition is liable to be dismissed.

6. Respondent No.2 – Nigam has also filed its reply, through its counsel, who has submitted that the present instance is the second one because in the earlier instance, the petitioner was found to be guilty for committing theft of electricity on 22.08.2016 and at that time, he was levied penalty of Rs.14,654/- and the petitioner compounded the offence by making payment of the penalty of Rs.14,654/- and also the compounding fee of Rs.6000/-, however, now again his premises were raided on 24.02.2018 at about 12:45 P.M., by a team of the office of Nigam and it was found that though, the supply was running through the meter at the premises of the petitioner yet its seals and block were found tampered. On the basis of assessment, petitioner was found to have caused loss of Rs.17,435/- to the department on account of theft of electricity. As such notice u/s 135 of the Electricity Act, vide Memo No.SDGHD/2018/38 dated 09.03.2018, for recover of Rs.17,435/- was given to the petitioner. The petitioner is habitual offender of making theft of electricity as such the department, this time, preferred to lodge FIR against the petitioner. Hence, the present petition is liable to be dismissed.

7. Heard learned counsel for the petitioner and learned counsel for



the State and also for the respondent No.2 and also perused case file with their able assistance.

8. The petitioner is alleged to be responsible for making theft of electricity by tempering its seals and box and due to his act, he has caused a financial loss to the tune of Rs.17,435/- to the department – respondent No.2. As the petitioner was earlier also in the year 2016 found indulged in the same act and had caused a financial loss of Rs.14,654/- to the department, he was allowed to compound the offence by charging compounding fee of Rs.6,000/- over and above the penalty of Rs.14,654/- imposed upon him. However, due to the petitioner's committing same offence for the second time, the department has chosen to lodge an FIR against the petitioner and the petitioner has filed this petition to seek quashing of said FIR which is Annexure P-1 on the record of this file before this Court.

9. The case of the petitioner is that earlier also he had challenged the demand notice issued by the department – respondent No. 2 by filing Civil Suit before the Civil Court and the learned Civil Court decreed his suit vide judgment and decree dated 13.03.2018, Annexure P-4. The demand notice now issued for recovery of Rs.17,435/- is also under challenge before the learned Civil Court wherein not only demand notice has been stayed but disconnection of electricity meter has also been stayed by the learned Civil Court, vide order dated 19.03.2018, Annexure P-5. As such, the department has attempted to falsely implicate the petitioner in criminal proceedings and got lodged FIR, Annexure P-1.

10. On the other hand, stand of the State is that challan has already been presented and charges have also been framed against the petitioner.



Prosecution is to adduce evidence whereas the stand of the respondent No.2 is that the petitioner is habitual offender of committing theft of electricity.

11. This Court has gone through the judgement dated 13.03.2018 passed by the learned Civil Judge (Junior Division) Karnal, passed in Civil Suit No.2622/16 titled “Ved Parkash Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & anr.” vide which the impugned notice (bearing SDGHD/2016/347 dated 23.08.2016) was declared null and void and not binding upon the plaintiff and the department was restrained from recovering the amount of impugned notices from the plaintiff and was also restrained from disconnecting the electricity supply/connection of the plaintiff. Direction was also given to refund the amount so recovered from the plaintiff in accordance with the notice. The judgment, thus, shows that the demand raised by the department was illegal and erroneous.

12. As far as, second demand amounting to Rs.17,435/- is concerned, the learned counsel for the petitioner has produced a copy of the final judgment of the learned Civil Court, dated 01.08.2023, vide which the learned Additional Civil Judge (Junior Division) Karnal has partly decreed the suit of the plaintiff and notice issued to the plaintiff u/s 135 of Electricity Act by the defendants has been declared as null and void. Copy of the judgment and decree dated 01.08.2023 is taken on record as Mark – ‘X’.

13. Recently, *in 'Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra' AIR 2021 SC 1918*, the Hon'ble Supreme Court reiterated the guiding principles to quash proceedings under [Section 482](#) of Cr.P.C and held as follow-:



"80. In view of the above and for the reasons stated above, our final conclusions on the, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under [Section 482](#) Cr.P.C , 1973 and/or under [Article 226](#) of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under [Section 173](#) Cr.P.C., 1973 while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under [Section 482](#) Cr.P.C., 1973 and/or under [Article 226](#) of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the [Code of Criminal Procedure](#) contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the `rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;
vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;



viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported.

Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under [Section 482](#) Cr.P.C., 1973 is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self restraint imposed by law, more particularly the parameters [laid down by](#) this Court in the cases of *R.P. Kapur (supra)* and *Bhajan Lal (supra)*, has the jurisdiction to quash the FIR/complaint;



xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under [Section 482](#) Cr.P.C., 1973 only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under [Section 482](#) Cr.P.C., 1973 and/or under [Article 226](#) of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under [Section 438](#) Cr.P.C., 1973 before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during investigation or till the investigation is completed and/or till the final report/chargesheet is filed under [Section 173](#) Cr.P.C., 1973 while dismissing/disposing of the quashing petition under [Section 482](#) Cr.P.C., 1973 and/or under [Article 226](#) of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under [Section 482](#) Cr.P.C., 1973 and/or under [Article 226](#) of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is

required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order. xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

14. A two Judge bench of the Hon'ble Supreme Court “['HMT Watches Limited vs M.A. Abida'](#) (2015) 11 SCC 776” has held that inherent powers under [Section 482](#) of the Cr.P.C. cannot be extended for determining question of facts. It is only for the trial Court to determine the disputed questions of fact after examining the evidence on record and interference by this Court with regards to factual questions is impermissible in law.

15. As far as the quashing of the present FIR is concerned, this Court while relying upon the mandate discussed in the above mentioned judgments of the Apex Court as well as taking into consideration the factual aspects of the present case does not find any reason to quash the FIR as the charges have already been framed in the case and the matter is at evidence stage.

16. Dismissed.

03.12.2024
anuradha (v)

(SANDEEP MOUDGIL)
JUDGE

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