

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46371-2022
Decided on 24.09.2024

Amit Madan	VS.	... Petitioner
State of Punjab & Ors.		... Respondents

CRM-M-47650-2022

Amit Madan	VS.	... Petitioner
State of Punjab & Ors.		... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Anil Chawla, Advocate for the petitioner

[Mr. Malkiat Singh, DAG Punjab](#)

Ms. Promila Nain, Advocate and
Ms. Isha Dhingra, Advocate for respondents No.2&3

Sandeep Moudgil, J.

(1). This order shall dispose of the above-cited two criminal misc. petitions pertaining to theft of electricity by the petitioner in his Aahata (tavern) and in relation thereto, two FIRs were lodged. Order is being passed in CRM-M-46371-2022 by treating it to be the lead case.

(2). The jurisdiction of this Court has been invoked under section 482 Cr.P.C for quashing of FIR No.1003 dated 02.09.2021 under Section 135 of Electricity Act, 2003 registered at police station Anti Power Theft Jalandhar, District Jalandhar (Annexure P1).

(3). The instant FIR was registered against co-accused Rajiv Gill @ Gora on the basis of memo No.1010 dated 17-08-2021, which was issued by Assistant Executive Engineer (Operation), Commercial Sub-Division, Civil Lines, Partap Bagh, Jalandhar, where it was stated that on 13-08-2021 during

checking of Assistant Engineer Sub- Division, Civil Lines, the co-accused was found indulging in direct theft of electricity at Multi Bazar, Jyoti Chowk, Jalandhar. Notice was issued under Section 135 of the Electricity Act to deposit Rs.2,36,595/- towards compensation and Rs.18,650/- towards compounding charges. Later on the name of the petitioner has been added vide rapat No.25 dated 05.09.2022 (Annexure P2).

(4). Learned counsel for the petitioner submits that in pursuance to the agreement entered into by him with the Municipal Corporation, Jalandhar in relation to e-auction for parking and other utilities at Rangla Vehra and the tender was allotted to petitioner's proprietorship, namely, A SQAURE MEDIA vide agreement dated 05.02.2021 which pertained to operating and maintaining the parking place with respect to the parking place/surface located at the site for a period of three years. It is submitted that petitioner further entered into license agreement with main accused Rajiv Gill on 05.01.2021 agreeing upon the responsibilities for and in connection with operation and maintenance of the parking place and since then the petitioner is not in possession of any part of the premises in dispute.

(5). It is argued that mere symbolic possession with the petitioner has nothing to do with the liability of theft imposed upon him, for the liability in case of theft of electricity, the person who has been found to have been illegally abstracting the electricity inasmuch as it is not the case of the police that the petitioner was found putting kundi and doing theft of electricity on the spot. He urged that neither the petitioner nor his representative were informed or were present at the spot.

(6). Reply has been filed by respondents No.2&3-PSPCL wherein it has been averred that it has no knowledge with the alleged internal arrangement between the petitioner and alleged Rajiv Gill and the said site, namely, Rangla Vehra consisting of various shops was licensed to the petitioner.

(7). Ms. Promilla Nain, learned counsel for respondent-Corporation submitted that factum of inspection has not been disputed and the irregularities found by the inspection team during investigation is also not in dispute. The only defence taken by petitioner was that subject site was let out/further licensed by the petitioner-licensee to Rajiv Gill and, therefore, since the petitioner was not operating the site himself, he cannot be held guilty but once it is admitted that theft of electricity was committed on the said premises which was owned by the Municipal Corporation and given on license to the petitioner, the petitioner would be liable.

(8). On the other hand, reply has been filed by Kewal Kishore, PPS, DSP, Vigilance & Security, PSPCL, Jalandhar submits that the petitioner is in legal possession of the parking space Rangla Vehra which was allotted to his firm A Square Media by the Municipal Corporation and thus answerable to any illegality done at the site.

(9). Heard learned counsel for the parties.

(10). It is astonishing that the petitioner has come for quashing of FIR alleging that if any theft was committed, it was committed by co-accused Rajiv Gill @ Gora and petitioner had no control over him as far as abstraction of electricity is concerned as the site in question was handed over to Rajiv Gill vide agreement dated 05.01.2021. On the other hand, the petitioner has

also prayed for quashing of entire FIR which was made against the Rajiv Gill and the petitioner. This shows that this petition has been filed by the petitioner in league with Rajiv Gill @ Gora.

(11). Once the petitioner had obtained connection in its own name, it was his responsibility to see that the electric connection is used legally and lawfully. The license for operation and maintenance of parking place was originally and principally assigned to the petitioner and if there was any deficiency in service or theft or any other malpractice, it shall be the sole responsibility of the petitioner. The petitioner cannot wash off its hands saying that it has nothing to do with the parking place once it gave license to Rajiv Gill @ Gora.

(12). The Allahabad High Court in case **Kunwar Sarvesh Kumar Singh v. Paschimanchal Vidyut Vitran Nigam Ltd., 2011 SCC OnLine All 1848** wherein Electricity theft was detected in an ice factory that had been let out. A modified assessment of Rs. 21,17,016/ was raised against the owner. It was this notice that was under challenge. The owner denied his responsibility on the plea that the tenant was at fault. The criminal trial had ended in acquittal. It was held that definition of 'consumer' in section 2(15) of Electricity Act is wide enough to cover an owner. The Allahabad High Court held that if at the concerned premises theft is detected, for the purpose of Section 135, the proceedings can be initiated against the petitioner and the mere fact that the premises is let out to someone else would make no difference.

(13). It may be a different thing that petitioner in such case circumstances may have a defence of the existence of *mens rea* on his part

which is a condition precedent for attracting offence under section 135 but that is a matter to be seen during the course of trial. Section 135 of the 2003 Act would be attracted to the petitioner if he is owner of the premises. In the criminal trial, the owner can very well take plea of absence of *mens rea* on his part. The well settled proposition of law envisages that powers under Section 482 of CrPC to quash criminal proceedings should be exercised very sparingly and in rarest of rare cases and the Court shall not embark upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The power can be used only to prevent the abuse of process of court and cannot be exercised to stifle the legitimate prosecution.

(14). In view of the above discussion, there is no merit in the present petition seeking quashing of the FIR and the same is hereby dismissed.

(15). However, the observations made herein above, shall have no effect on the merits of the case.

24.09.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No