

(2003) 04 P&H CK 0149

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 30803 of 2000 and Criminal Miscellaneous No.
33850-M of 1999

Harish Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: April 7, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173
- Electricity Act, 1910 - Section 39
- Penal Code, 1860 (IPC) - Section 379

Citation: (2003) 6 CriminalCC 16 : (2003) 3 RCR(Criminal) 635

Hon'ble Judges: R.C. Kathuria, J

Bench: Single Bench

Advocate: S.S. Narula, for the Appellant; Amar Singh, AAG Haryana, for the Respondent

Final Decision: Allowed

Judgement

R.C. Kathuria, J.

Harish Kumar, petitioner seeks quashing of FIR No.485 dated 29.8.1998 registered u/s 39 of the Electricity Act, 1910 (hereinafter referred to as "the Act") read with Section 379 of the Indian Penal Code with Police Station, City. Sonapat and the subsequent proceedings taken therein including the police report filed u/s 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code").

2. The circumstances under which the present case came to be registered need to be noticed briefly. On 12.8.1998 at 11.30 a.m. Hawa Singh, A.F.M. in the presence of Gulia, Junior Engineer, Haryana State Electricity Board (for short "the Board") checked the premises of Ranbir Singh, R-25, Model Town, Sonapat wherein electricity meter of category bearing Account No. LS/AP/DS/NDS had been installed. On checking, it was found that the electric energy had been extracted illegally and dishonestly by artificial means. The manner in which the energy was extracted was

that wiring of both the meters was made in such a way so as to stop the registering of energy. Accordingly, memo No.6614/CA dated 13.8.1998 (Annexure P-2). was addressed to the Stating House Officer, Police Station, City Sonapat on the basis of which present case was registered. During the course of investigation, Harish Kumar, petitioner-accused was arrested. After completion of the investigation, police report was filed in Court in respect of the aforesaid offences. It is thereafter the present petition had been filed.

3. Quashing of the FIR and the police report filed had been challenged on behalf of the petitioner on two grounds. Firstly, that notice bearing memo No.6613/RA dated 13.8.1998 (Annexure-P. 1) was addressed to Ranbir Singh in whose name the meter was installed at the premises, wherein he was informed that M & T seals of the meter had been tampered with and case of theft of energy had been detected and for that reason he was liable to pay compensation amount of Rs. 11,970.10 so assessed had been found due from him under the relevant provisions and terms and conditions of the Board for supply of energy to his premises and accordingly he was asked to deposit this amount within 48 hours failing which FIR would be registered and without waiting for the deposit of the amount demanded the present case was got registered on the same day vide communication No.6614/CA dated 13.8.1998 (Annexure-P.2). Secondly, that the petitioner had deposited amount of Rs. 12,328.60 vide cheque No.401168 which had been encashed by the Board as is evident from the statement of account maintained with the Canara Bank, copy of which is Annexure-P.3 and for that reason this case was required to be compounded and settled in terms of the policy of the Board as spelled out from Circular dated 12.4.1991, copy of which is Annexure-P.5 and for that reason filing of the report and initiation of criminal proceedings against the petitioner-accused on the basis of FIR and the police report filed is the misuse of the process of the Court. In support of the stand taken reliance was placed by him on Ram Dhari v. State of Haryana, 1997 (2) RCR (Cr.) 275, Hem Raj Anand v. State of Haryana, 1999 (1) RCR (Cr.) 103 and Ram Narain v. State of Haryana, 2000 (1) RCR (Cr.) 447. In all these cases in terms of the policy of the Board after payment of the compensation amount, the continuance of the case registered for theft of electricity was held to be a futile exercise and for that reason criminal proceedings initiated against the named accused of these cases were quashed.

4. State counsel has not been able to refute the factual and legal position -stated on behalf of the petitioner.

5. It is clear from the statement of account of Canara Bank, Sonapat (Annexure-P.3) that in terms of the demand made in notice Annexure-P. 1, the compensation amount assessed by the Board had been deposited. It is also manifest from the contents of Annexure-P. 1 that Ranbir Singh was directed to deposit the compensation amount within 48 hours and it is thereafter report was required to be registered in the event of his failure to do so. But without waiting for that period, FIR

for the theft of electricity was got registered at the behest of Additional Executive Engineer of the Board. In para 2 of the reply filed, it had been explained on behalf of the respondent-State that as the meter was installed in the name of Ranbir Singh, initially notice was issued to him but subsequently during inquiry it was found that Ranbir Singh had sold this house to the father of the petitioner and at the time of checking it was in possession of the petitioner and for that reason notice was also sent to the petitioner. It was further stated that payment of compensation to the Board was a civil liability as distinct from the crime committed of theft of electricity energy committed with the help of the meter installed at the aforesaid premises, report u/s 173 of the Code was rightly filed in respect of the stated offences in the Court of Chief Judicial Magistrate, Sonapat. In the reply tiled payment of compensation stated by the petitioner has not been disputed.

6. State counsel also did not dispute that the Board had issued sale circular No. S/ 91 dated 12.4.1991, wherein it as decided to charge one time compensation where theft of energy was detected and the offender comes forward voluntarily to settle and make payment of amount of compensation determined by the Board. In view of these circumstances, the ratio of the principle laid down in all the three cases referred to above would fully apply to the facts of the present case. Under the circumstances of the case, continuance of the proceedings would not serve any purpose.

For the aforesaid reasons, the present petition is accepted, FIR in question and the police report filed u/s 173 of the Code against the petitioner-accused and the subsequent proceedings taken therein are quashed.