

(2008) 02 P&H CK 0329

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 690 of 2000

Gurdev Singh and
others

APPELLANT

Vs

Punjab State
Electricity Board and
others

RESPONDENT

Date of Decision: Feb. 4, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 133

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: Narinder Singh, for the Appellant; Kapil Kakkar, Advocate for the Respondent
Nos. 1 and 2 and None For the Respondent No. 3, for the Respondent

Judgement

Kanwaljit Singh Ahluwalia, J.

Petitioners Gurdev Singh, Gurtej Singh and Jagmohan Singh had moved an application u/s 133 Cr.P.C. for removing electric poles installed in Khasra Nos. 327/1, 328/1, 329/1, 330/2, 331/2 gairmumkin Pahi through which electric connection has been given to the tube-well of Kattar Singh of village Ramgarh Bhunder.

2. The Sub Divisional Magistrate, Talwandi Sabo, after hearing both the sides, accepted the application and held as under:

"....The arguments of the learned counsels were heard and the file was perused. All the documents on the Criminal Revision No. 690 of 2000 2 record revealed three major things. According to statements and various reports, the Pahi is 2 karams wide. On one side there is a Puckha Khal and from the other side there is kucha khal. The poles have been installed in the Kucha Khal by the Electricity Board. As per report of Tehsildar, Talwandi Sabo dated 14.7.97, the poles are in the Pahi. Apart from this, Executive Engineer, Grid Maintenance, Sub Division Bathinda vide his

letter No. 1450 dated 2.11.94, marked "A" has described that these poles are not technically and correctly erected. As per the department, responsibility of the S.D.O. And J.E., P.S.E.B. Maur has been fixed for installing these poles wrongly. As per these circumstances, when the technical reports and the demarcations described the poles to be wrongly installed, application of the petitioner is accepted and P.S.E.B. has been directed that the poles be removed from the Pahi and after obtaining proper technical sanction from the Department, the poles be installed at proper place. Order pronounced. File after compliance may be consigned to judicial record room, Bathinda".

Kattar Singh for whose benefit electric poles were erected, filed a revision petition in the Court of learned Sessions Judge, Bathinda, which was heard and decided by the Court of learned Additional Sessions Judge, Bathinda. Revision petition of Kattar Singh was accepted and learned Additional Sessions Judge observed as under:

"...Moreover, according to Section 42 of the Electricity (Supply) Act, 1948, electricity charges are empowers the Criminal Revision No. 690 of 2000 3 Board to place any wires, poles, wall brackets, stays apparatus and appliances for the transmission and distribution of electricity. Sub-Section (1) further lays down that Board shall have all the powers which the telegraph authority possesses under Part III of the Indian Telegraph Act, 1885 contains Section 10 to 19B in Part-III and Section 10 empowers the telegraph authority to place and maintain a telegraphic line under, over, along or across an immovable property. So in view of these provisions of the Electricity (Supply) Act also the respondents have no authority to restrain the electricity Board from installing the poles at any particular place especially when they do not cause any obstruction to any passage. Moreover, the civil suit has already been decided against the respondents and the learned Magistrate has not taken notice of that finding of the Civil Court. Therefore, I am of the opinion that grave miscarriage of justice has taken place due to the passing of the impugned order by the learned Magistrate. So in view of aforesaid discussion, I accept this revision and set aside the impugned order dated 26.9.97 passed by the learned Magistrate".

It has been contended before me that there is a specific provision under the Indian Electricity Act, if any person is aggrieved, he can apply to the Electricity Board for removal of the electric poles and expenses to this effect is to be borne by the aggrieved person.

3. Mr. Kakkar appearing for Electricity Department has submitted that these poles were erected in the year 1994 and till today no untoward incident has taken place.

4. I have heard learned counsel for the parties and perused the record.

5. There is a difference between nuisance and inconvenience. Petitioners before me may have inconvenience but the very fact that the electric poles carry electricity and provide public utility will not amount to nuisance. A citizen cannot object as to which place electric poles should be affixed. Electricity department has to ensure that no

person suffers any injury. Mr. Kakkar has stated that Electricity Department takes into consideration safeguards, which are necessary for the transmission of electricity. Revisional Court cannot come to the rescue of the petitioners. Petitioners, if so advised, under the specific provisions of Indian Electricity Act, can approach the Electricity Board for redressal of their grievance. Liberty to that extent is granted.

6. With these observations, the present revision petition is disposed of.