

(1997) 12 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6281/M of 1996

Hans Raj

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 08-12-1997

Acts Referred:

Citation : (1998) 2 AICLR 469 : (1998) 1 AICLR 774 : (1998) 1 RCR(Criminal) 636 : (1998) 1 RCR(Criminal) 846

Hon'ble Judges : K.S.Kumaran, J

Advocate : Jasbir Singh, Rajesh Girdhar, A.S. Ladhar, Advocates for appearing Parties

Judgement

K.S. Kumaran, J.

1. The Executive Engineer, Punjab State Electricity Board, Mansa (respondent2 herein) complained to the police on the basis of which F.I.R. No. 63 of 29.4.1994 and 17.5.1994 has been registered by Police Station City, Mansa. The third respondent has alleged in the complaint that the premises of Hans Raj, the petitioner herein was checked by the A.E.E./DS, Sub Urban S/Division, Mansa in the company of police officers on 29.4.1994 and theft of electricity by directly tapping from the electricity line was found. Petitioner's son was apprehended at site and was served notice for Rs. 8543/ on account of theft. Once again on 16.5.1994 on checking by the Special Task Force, stealing of electricity was found. The petitioner is habitually committing theft of energy. It is on this basis the above F.I.R. came to be registered under Sections 379, 427 I.P.C. and under Section 39 Indian Electricity Act, 1914.

2. The petitioner has, therefore, approached this Court under Section 482 Cr.P.C. for quashing the above said F.I.R. and the consequential proceedings. According to the petitioner, no offence is made out from the reading of the F.I.R. and no theft of energy was detected from the house of the petitioner. According to the petitioner, his house was not checked/raided by the third respondent as per rules and no independent witness was joined at the time of checking. The petitioner

has further alleged that his son is only a small kid of one year. The petitioner claims that if there was any theft of energy, the claim is of a civil nature, but the respondents without accepting the procedure for recovery by filing the suit, have adopted criminal procedure to harm the petitioner. The petitioner has alleged that the house and the meter did not belong to him. The petitioner has filed a suit against the respondents before the Sub Judge Ist Class, Mansa challenging the notice for recovery.

3. Reply on behalf of the Ist respondent was filed by Joginder Singh Kahlon, D.S.P., Sub Division, Mansa, as follows :

Challan has been put in the Court and the case is fixed for evidence. The petition is not maintainable. The petitioner is in the habit of indulging in theft of electricity. Theft of electricity was detected in the residential premises of the petitioner at Mansa. The civil and criminal cases can go side by side.

4. Reply on behalf of respondent 2 and 3 has been filed by the third respondent as follows :

The F.I.R. was lodged on the report made by the checking authorities as well as the Task Force who found at the spot that no meter was installed/present at the time of checking and that the petitioner was using electricity directly from the live wire from the main line, which falls clearly within the definition of theft of energy. The house of the petitioner was raided twice firstly on 29.4.1994 and again on 17.5.1994 and theft of electricity was found, and at that time, there was no meter.

5. I have heard the counsel for both the sides. A reading of the F.I.R. shows that theft of electricity was detected at the house of the petitioner on two dates. House of the petitioner was checked twice i.e. on 29.4.1994 and 17.5.1994. The contention of the petitioner that the house does not belong to him and that son who was present, was aged one year only, are all matters which need not be gone into now. This Court in these proceedings has to see whether the allegations in the complaint prime facie establish the commission of the offence, which in my opinion, they do. The pendency of the civil proceedings filed by the petitioner cannot operate as a bar for the criminal proceedings. The suit filed by the plaintiff, as is seen from the plaint annexure P.3, is for a declaration that the demand for Rs. 8543/ dated 2.5.1994 made by the Punjab State Electricity Board is illegal, and for permanent injunction restraining the Board from recovering the same. A reading of this plaint shows that it relates to the occurrence on 29.4.1994 only since the recovery notice is dated 2.5.1994. But the present F.I.R. relates to the occurrence on 17.5.1994 also, which is not covered by the suit. Further, even otherwise, the suit relates to the liability of the petitioner to pay the amount whereas in the F.I.R., the liability is under the criminal law. Both the liabilities can be enforced against the petitioner. These proceedings can go on simultaneously. The learned counsel for the respondent also relies upon the decision of this Court in *Mahabir Singh v. Chandan Manerjee*, 1996(1) R.C.R. 186

and the decision in Sukhdev Singh v. Gurnam Singh, 1995(3) R.C.R. 35 which certainly support the contention of the respondents that both the proceedings can proceed simultaneously, and that they are not alternative remedies.

8. Therefore, when the reading of the F.I.R. discloses prima facie commission of the offence as alleged, and when the civil as well as criminal proceedings can go on simultaneously, the F.I.R. and the consequential proceedings cannot be quashed. Further, the prosecution has filed the charge sheet and thereafter this Court in proceedings under Section 482 Cr.P.C., will not normally quash the proceedings unless there are forensic exigencies and compelling justification, whereas there is none in this case. Therefore, this petition has to fail.

9. Accordingly, the petition is dismissed.