

(1996) 05 P&H CK 0120

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6743-M of 1995

Harjinder Kaur

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 31-05-1996

Acts Referred:

Citation : (1996) 3 RCR(Criminal) 76

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

Advocate : Aparna Mahajan, Aditya Kumar Sharma, Advocates for appearing Parties

Judgement

K.S. Kumaran, J.

1. The Assistant Executive Engineer of the Haryana State Electricity Board, Panchkula, preferred a complaint to the SHO, Panchkula, Police Station 16.1.1991 (Memo No. 2621) whereby he requested the registration of FIR against one Harjinder Singh, resident of H. No. 1031, Sector 10, Panchkula, for having committed theft of electric energy. In the complaint he stated that he alongwith other officials of the Board checked the premises of the consumer on 10.10.1991 at about 6.00 P.M. and found the consumer committing theft of energy. He has also mentioned about the manner in which theft of electric energy was being committed. According to the complaint, the meter and the cable were therefore, removed. The complainant has alleged that the consumer should either pay the damages or a criminal case should be registered against him for committing the theft of energy under Section 379, Indian Penal Code on failure to pay the charges which, come to Rs. 5,191/-. The complaint is a part of Annexure P3 attached with this petition. The FIR registered on the basis of the complaint is also a part of Annexure P3 wherein the date of occurrence is mentioned as 10.10.91. The FIR has been registered against the said Harjinder Singh. It also shows that a case under Section 379 IPC and 39 of the Indian Electricity Act was registered. The charge sheet filed in this case is also a part of Annexure P3. In the charge sheet however the names of the accused are shown

as (1) Pitamber Singh and (2) Harjinder Kaur wife of Pitamber Singh. Column 7 relating to the facts of the case indicates that a complaint was received by the police station from the Assistant Executive Engineer, City Panchkula, requesting the registration of FIR against Harjinder Singh, resident of H.No. 1031, Sector 10, Panchkula for having committed theft of energy. It is also mentioned that the premises of the consumer were checked by the officials of the Electricity Board on 10.10.1991 at 6.00 P.M. and that the consumer was found committing theft of energy. The challan/charge sheet is dated 20.9.1992. However, while seeking the remand of the accused on 6.4.1992, the Assistant Sub Inspector after narrating the facts stated that the case was registered and investigated by the Assistant Sub Inspector, and during the investigation it was found that the printing press was being run by Harjinder Kaur instead of Harjinder Singh and the date of offence was 9.10.91 instead of 10.10.91. He has also mentioned that Harjinder Kaur was arrested and was being produced, and that she may be remanded to judicial custody for 14 days. That is why Harjinder Kaur, wife of Pitamber Singh, has approached this Court under Section 482, Cr.P.C. for quashing complaint dated 16.10.91, FIR No. 268/1991 of Police Station Panchkula and the charge sheet. This petition has been filed against the State of Haryana represented by the Superintendent of Police Ambala.

2. The contention of the petitioner is that the name of the accused in the complaint is Harjinder Singh, a male and not a female; that the date of alleged checking by the officials of the Electricity Board is also mentioned as 10.10.91 and not 9.10.91, and so, while the complaint and the FIR were against Harjinder Singh the remand report for the first time stated that the name of the accused is not Harjinder Singh but is Harjinder Kaur and the date of commission of the offence was 9.10.91 and not 10.10.91. The petitioner claims that, so alleging in the request for judicial remand/for the first time, that she, who was arrested, was sought to be remanded to judicial custody. This is wholly unsustainable, according to the petitioner. She has also raised certain other points that, while conducting such raids and checks, the staff of the Electricity Board should give particulars in a prescribed form (as is found at Annexure P5) whereas there is no such form giving the details in this case. The petitioner also contends that there was no raid either on 9.10.91 or 10.10.91 and this is also evidenced by the fact that there is a variation in the amount of penalty.

2. Respondent State has filed a reply that the Haryana State Electricity Board is a necessary party to these proceedings, as allegations have been made against the staff of the Haryana State Electricity Board and also because it is only the said Board which can file a complete reply with reference to the allegations made in the petition. But it is admitted that FIR No. 268/1991 was registered by then SHO of Panchkula Police Station, and that according to the FIR the name of the accused person is Harjinder Singh and not Mrs. Harjinder Kaur though the H. No. is 1031, Sector 10, Panchkula, and it is also stated that the second accused is Pitambar Singh, husband of Harjinder Kaur. It has also been mentioned in the reply that the name of Harjinder Singh has been mentioned instead of Smt.

Harjinder Kaur due to a clerical mistake and now the name of the petitioner has been substituted in place of Harjinder Singh.

3. Therefore, in these circumstances we will have to see whether the charge sheet and other consequential proceedings against the petitioner Harjinder Kaur have to be quashed, although the petitioner has prayed for the quashing of the complaint and the FIR also.

4. There is no question that in the complaint given by the officials of the Electricity Board to the SHO, Panchkula Police Station the name of Harjinder Singh is mentioned and not that of Smt. Harjinder Kaur, the petitioner herein. The date of the alleged raid and checking by the officials of the Haryana State Electricity Board is also given as 10.10.91. The FIR registered on the basis of this contains only the name of Harjinder Singh and the date of the offence as 10.10.1991. The complaint is dated 16.10.1991 and the FIR appears to have been registered on 6.12.1991. The charge sheet appears to have been filed on 20.9.92. But the request for remand was made on 6.4.1992 wherein for the first time it was requested that the name of the accused be read as Hajinder Kaur and not Harjinder Singh and the date of offence as 9.10.1991 and not 10.10.1991. The FIR itself must have been registered normally after some investigation because it was registered on 6.12.1991 only, though the complaint is dated 16.10.91. Still at that time the respondent has not chosen to say that Harjinder Singh is a mistake and that Harjinder Kaur is the real accused. It is only at the time of seeking judicial remand for Harjinder Kaur on 6.4.1992 that the ASI stated that the name of the accused is Harjinder Kaur and not Harjinder Singh. Subsequently, the charge sheet was filed against Harjinder Kaur also on 20.9.1992. The charges framed by Judicial Magistrate Ist Class Ambala produced on the direction of this Court, show that the charge against the petitioner herein is that she was found committing theft of electric energy on 9.10.91 at 6.00 p.m. The learned counsel for the petitioner contends that when the complaint by the officials of the Electricity Board alleged that the offence was committed by Harjinder Singh on 10.10.1991 and when the FIR registered on that basis also says so, the prosecution is not entitled to change the date of the offence, as also the name of Harjinder Singh was given as accused. The prosecution cannot contend that the Haryana State Electricity Board is not made a party to this petitioner and, therefore, they are no in a position to confirm who the real accused is. Even if we take for the sake of argument that the name of the accused while making request for remand and, therefore, the charge sheet, etc., against her will have to be quashed.

5. I agree with the learned counsel for the petitioner. The complaint shows that inspection was carried out by the officials of the Electricity Board on 10.10.91, and the request was for the registration of First Information Report against Harjinder Singh only. The officials of the Electricity Board must have had reasons for giving the name of the accused as Harjinder Singh. Obviously, there cannot be a mistake in such matters if really the officials of the Electricity Board had

inspected the spot and had found a person committing theft of energy. The prosecution is not able to give any explanation as to how the name of Harjinder Singh was given as accused. The prosecution cannot contend that the Haryana State Electricity Board is not made a party to this petitioner and, therefore, they are not in a position to confirm who the real accused is. Even if we take for the sake of argument that the name of the accused was given by mistake in the complaint as well as in the FIR, there cannot be a mistake with regard to the sex. While the accused as mentioned in the complaint and the FIR is a male, in the remand report even the sex is sought to be changed apart from the date of occurrence. If in the course of the trial the court finds that the offence was committed by one or more persons or by a different person, then, it is certainly open to the court to take steps for bringing the said persons as accused, but, the prosecution itself cannot say that the offence was committed by a different person, that too by a male, on a particular date, and then while seeking remand of the accused say that the accused is a different person belonging to a different sex and that the offence was also committed on a date altogether different. The charge framed by the Judicial Magistrate Ist Class against the present petitioner is that she committed theft of electric energy on 9.10.91 whereas, the complaint on the basis of which the FIR has been lodged shows that the offence was committed on 10.10.1991. As rightly contended by the learned counsel for the petitioner, the complaint lodged by the Electricity Board on the basis of which the FIR was recorded does not disclose the commission of an offence by present petitioner on 9.10.1991 as is sought to be indicated by the charge framed by the learned Judicial Magistrate Ist Class. The documents found in Annexure P3 except the charge sheet filed by the police and the request for remand for judicial custody, do not show that it is the petitioner who committed the offence. Therefore, in these circumstances I am of the view that the contentions of the petitioner are well founded and the charge sheet and the consequential proceedings as against the petitioner will have to be quashed, and are accordingly quashed in so far as they relate to the present petitioner. The petition is ordered accordingly.