
(2013) 03 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : CRM M-544 of 2013 (O and M)

Kulwinder Singh	Vs	APPELLANT
State of Punjab		RESPONDENT

Date of Decision : 02-03-2013

Acts Referred:

Constitution of India, 1950 — Article 14
Criminal Procedure Code, 1973 (CrPC) — Section 173, 4, 4(2)
Electricity (Amendment) Act, 2007 — Section 15
Electricity Act, 2003 — Section 135, 151, 151A, 152, 152(2)

Citation : (2014) 1 Crimes 208

Hon'ble Judges : M.M.S. Bedi, J

Bench : Single Bench

Advocate : Om Pal Sharma, for the Appellant; Ankur Jain, AAG, Punjab, for the Respondent

Final Decision : Allowed

Judgement

M.M.S. Bedi, J.—Additional information has been supplied by SHO of Anti Power Theft Police Station PSPCL, Patiala that in the year 2010, 2011 and 2012, FIRs registered u/s 135 of the Electricity Act are 164, 291 and 500, respectively and that the challan has been presented in only 22, 17 and 14 cases respectively. Figure is taken on record. The petitioner in the present case seeks the concession of pre-arrest bail in a case of theft of electricity lodged by Assistant Engineer, Transmission, Punjab State Power Corporation Limited, Sub Division, Ghanaur, alleging that the petitioner was indulging in theft of electricity. Offence u/s 135 of the Electricity Act, (for short the Act) entails punishment for a term which may extend to 3 years with fine or with both. As per Section 151 of the Act, no Court can take cognizance of an offence punishable under the Act except upon a complaint in writing made by appropriate Government or appropriate commission or any of their officer authorized by them or a Chief Electrical Inspector or Electrical Inspector or licensee or generating Company as the case may be for this purpose. It is apparent that the offence under the Act is non-cognizable. It

appears that on addition of proviso to Section 151 of the Act vide Electricity (Amendment) Act, 2007 (26 of 2007) Section 15, w.e.f. June 5, 2007, the Courts have been given authority to take cognizance of an offence punishable under the Electricity Act upon a report of a police officer filed u/s 173 of the Code of Criminal Procedure, 1973. Special Courts have been constituted u/s 153 of the Act to take cognizance of offence without accused being committed to the Court for trial. Provisions of Section 4 of the Code of Criminal Procedure, reads as follows:-

4. Trial of offences under the Indian Penal Code and other laws.- (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provision hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

2. As per the abovesaid provisions the offences under Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of Criminal Procedure Code but so far as the offences under other laws are concerned, these are to be investigated, inquired into, tried or dealt with according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offence. Schedule II of the Code of Criminal Procedure classifying the offences under "other laws" prescribes that if an offence is punishable with imprisonment for less than 3 years or with fine only, the offence will be non-cognizable and bailable. Despite the fact that punishment provided for offence u/s 135 of the Act is upto 3 years, the proviso of Section 151 of the Act added vide amendment 26 of 2007 vide Section 15 w.e.f. June 15, 2007 enables a Court to take cognizance of an offence punishable under the Electricity Act even on the report of a police officer u/s 173 of Cr.P.C. Section 151A of the Act incorporated vide amendment of year 2007, gives power to the police to investigate an offence punishable under the Act as per provisions of Chapter XII of Cr.P.C. A perusal of the Act further indicates that on one hand the Electricity Act provides that it is not permissible without a complaint in writing made by an appropriate authority to take cognizance but on the other hand the proviso added to Section 151 in the year 2007 permits the taking of cognizance on the report of police u/s 173 Cr.P.C. Another interesting feature of the Act is that the offences have been made compoundable u/s 152 of the Act. Section 152(2) of the Act indicates that in case of payment of amount demanded alongwith compounding fee, no proceedings shall be continued against the consumer or the person in any other criminal case. The provisions of the Act indicate that the registration of FIR against any person not complying with the directions to pay the charges or compensation calculated and non-payment of compounding fee can entail serious consequences but any person succumbing to

the pressure by paying the amount demanded can easily get away by compounding the offence. It is apparent that the lodging of FIR under the added proviso and constitution of a special Anti Power Theft Police Station is being used as an arm twisting device to recover any amount in the name of penalty, fixed unilaterally. Prima facie on account of the above said circumstance, the power of registration of FIR is being used arbitrarily. The figures provided by the Department, on asking of the Court, indicate that in the year 2010, 164 FIRs were registered u/s 135 of the Act and challan has been presented only in 22 cases. In the year 2011, total FIRs registered were 291 but challan has been presented only in 17 cases. So far as figures of year 2012 provided are concerned, out of 500 FIRs registered u/s 135 of the Act, till date challans have been presented only in 4 cases. The above said data clearly indicates that the provisions of the Electricity Act of taking of cognizance in theft case on the police report u/s 151 of Electricity Act provides unbridled powers to recover amount of penalty and compounding fee are capable of being misused for recovering the compounding fee as well as unreasonable charges, and are also being used arbitrarily.

3. Since the constitutional validity of the amendments made vide Electricity Amendment Act, 2007 (26 of 2007) Section 15, w.e.f. June 5, 2007 in Sections 151 and 151A are not required to be determined in the present case being violative of Article 14 of the Constitution and ultra vires of the provisions of Section 4(2) Cr.P.C., no opinion is being expressed and is left open, however, the petitioner in the present case having joined investigation can be granted the concession of pre-arrest bail as it will be a debatable issue whether the punishment of 3 years imprisonment provided under the Act, the offence could be said to be cognizable and non-bailable. Petition is allowed and it is ordered that in case of arrest of the petitioner he will remain on bail against the bail bonds already furnished. This order will not prejudice the rights of Corporation to recover any amount in accordance with other provisions of law.