
(1997) 06 SHI CK 0024

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 23 of 1995

M/s. Arsh Castings Pvt. Ltd. and Another	APPELLANT
Vs	
State of Himachal Pradesh and Others	RESPONDENT

Date of Decision : 25-06-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 155, 155(2), 161, 173(8), 4(2)
Electricity (Supply) Act, 1948 — Section 49, 79
Electricity Act, 1910 — Section 39, 49A, 50, 51A
Penal Code, 1860 (IPC) — Section 120B, 379, 408, 420, 468

Citation : (1997) 3 ShimLC 217

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : Abhilasha Kumari, for the Appellant; Ashok Chaudhary, Assistant A.G. for Respondent Nos. 1 and 2 and K.D. Sood and B.K. Sood, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—By virtue of the present petition made u/s 482, Code of Criminal Procedure, read with Article 227 of the Constitution of India, the Petitioners have approached this Court for the quashing of FIR No. 344 of 1995 of Police Station, Paonta Sahib, District Sirmaur, whereby a case under, Section 379, Indian Penal Code read with Sections 39 and 49-A of the Indian Electricity Act, 1910, was registered against them.

Petitioner No. 1 M/s. Arsh Castings Pvt. Ltd. is a private limited company constituted under the Indian Companies Act, 1956, having its registered office at Jagatpur (Majra), Tehsil Paonta Sahib, District Sirmaur and is engaged in the manufacture of special steel castings and ingots. Petitioner No. 2 Shri Arvind Chaudhary is the Managing Director of Petitioner No. 1.

The Petitioner No. 1 is an electricity consumer within the meaning of the Indian

Electricity Act, 1910 (for short "the Act"), vide consumer No. AR/L-4 having a sanctioned load of 21.18 KVA.

2. On 11-8-1995, at about 3.30 P. M , Shri Nirmal Atri, an Assistant Engineer of the H.P. State Electricity Board along with his subordinate employees visited the factory premises of the Petitioners to check the electric line from Meter No. 001648. During the course of such checking and inspection, it was found that the owner of the meter, that is, the Petitioners, had inserted a thin wire in the meter by drilling a small/hole below the meter and as such was found committing the theft of electricity by stopping the disc of the meter with the help of the abovesaid thin wire inserted in the meter. The meter and the thin wire was sealed.

3. On the basis of the report made to the police by the said Assistant Engineer, a case u/s 379, Indian Penal Code read with Sections 39/49-A of the Act came to be registered at Police Station, Paonta Sahib on 11-8-1995, vide FIR No. 344 of 1995.

During the course of investigation of the case, the electric meter earlier sealed at the spot by the Assistant Engineer, was seized and taken into possession by the police and got examined from the Forensic Science Laboratory, Chandigarh. After examination, it was reported:

The meter disc was stopped by inserting a wire. There is a small drilled hole in front of the KWH meter. A wire was found inserted through this hole and through a hole of the rotating disc, thereby completely stopping the rotation of the disc and as a result the meter reading was contact (stopped increasing). By removing this wire the meter was checked and found working.

While the case is still at the investigation stage, the Petitioners have approached this Court by way of the present petition for the quashing of the abovesaid FIR No. 344 of 1995. Further proceedings in the case were stayed by this Court vide order dated 12-1-1996.

4 In seeking the quashing of the FIR No. 344 of 1995, the following points were raised on behalf of the Petitioners:

(i) the offence u/s 39 of the Act is not a cognizable offence and as such no case could have been registered and investigated by the police in view of the provisions contained in Section 155, Code of Criminal Procedure;

(ii) the report to the police has been made by a person who is not competent to do so; and

(iii) the allegations made in the FIR and the evidence so far collected during the course of investigation does not disclose any cognizable offence.

The learned Assistant Advocate General appearing for Respondents No. 1 and 2, and Shri K. D. Sood, the learned Counsel for the Respondent No. 3, while opposing the petition, have raised a preliminary objection that the present

petition is not competent in view of the ratio laid down by the apex court in *Jehan Singh Vs. Delhi Administration*, . In the said case, it was held by the apex court that where on the date of filing of the petition, u/s 561-A of the Code of Criminal Procedure, 1889 (corresponding to Section 482 of the Code of Criminal Procedure, 1973), no charge sheet or a complaint had been laid down in the court and the matter was only at the stage of investigation by the police, the court cannot, in exercise of its inherent powers interfere with the statutory powers of the police to investigate into the alleged offence and quash the proceedings.

5. I have heard the learned Counsel for the parties and have also gone through the record of the case.

It has been consistently held by the apex court in several cases that the inherent power of the court u/s 482 of the Code of Criminal Procedure should be sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of process of court if such power is not exercised. In a recent case of *Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another*, it has been held by the apex court as under:

It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is concluded and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded u/s 161 of the Code in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge-sheet. But only in exceptional cases, i e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence- the court may embark upon the consideration thereof and exercise the power.

When the remedy u/s 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy u/s 482 of the Code is available When the Court exercises its

inherent power u/s 482 the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When investigation officer spends considerable time to collect the evidence and places the charge-sheet before the Court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it can offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power.

In *M/s. Jayant Vitamins Ltd. Vs. Chaitanyakumar and another*, the facts of the case were that on the basis of report made by the Appellant company therein a case u/s 420, 408 read with Section 34, Indian Penal Code, came to be registered against five persons. During the course of investigation of the said case a number of documents were seized. After lapse of about nine months during which investigation continued, the investigating officer arrived at the conclusion that since the allegations were found to be of internal dispute of the company and as there was no basic evidence, there was no hope of success and consequently he closed the investigation. After the investigating officer had recorded his such opinion, he was transferred. Thereafter under directions of the Superintendent of Police further investigation in respect of offence was carried out. While such further investigation was still in progress, one of the person who was named as an accused approached the High Court of Madhya Pradesh u/s 482, Code of Criminal Procedure for quashing the investigation carried on in pursuance of the FIR. High Court after holding that the necessary ingredients to make out the offences were not made out, allowed the petition and quashed the investigation in pursuance of the case registered vide FIR in question. On the matter being carried further to the Apex Court, the order passed by the High Court of Madhya Pradesh quashing the proceedings was set-aside. It was observed:

After going through the impugned order and other connected papers, we feel that the High Court was not justified in quashing the investigation which is still on its way. Needless to emphasize that the further investigation in the offence is legally permissible as contemplated by Section 173(8) of Code of Criminal Procedure. The learned Counsel appearing for the State when asked represents that the investigation is not yet complete and the State would come to a definite conclusion as to the culpability of the Appellant only on the completion of the investigation. As repeatedly pointed out by various decisions of this Court that the investigation into an offence is a statutory function of the police and the superintendence thereof is vested in the State Government and the court is not justified without any compelling and justifiable reason to interfere with the investigation.

In *State of Bihar and Anr. v. K.J.D. Singh* 1994 SCC 63, the High Court of Patna had quashed the prosecution against the accused therein in respect of offence u/

s 120-B, 420, 468 and 471, Indian Penal Code, in exercise of its inherent jurisdiction u/s 482, Code of Criminal Procedure before the commencement of the trial. The apex court held that the power of the High Court to quash the proceedings should not be arbitrarily exercised to cut short normal process of a criminal trial except in exceptional cases. It was further held that it was not permissible to quash proceedings or appreciate evidence at the stage when the trial had not even commenced, and that the High Court should not have cut short the process of criminal trial in exercise of its inherent powers u/s 482, Code of Criminal Procedure, by quashing the prosecution launched against the Respondent at the stage when the trial had not even commenced.

6. The first point raised by the learned Counsel for the Petitioners is that the offence u/s 39 of the Act is not cognizable offence and as such the police cannot investigate into the matter in view of the specific bar contained in Sub-section (2) of Section 155 of the Code of Criminal Procedure, 1973, which provides:

No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

In support of her contention the learned Counsel for the Petitioners has placed reliance on the decision of Punjab and Haryana High Court in *Ram Kumar v. State* 1976 Ch LR 67 and that of the Kerala High Court in *Assistant Engineer, Electrical Vs. Ramankutty Panachical Narayanan and Another*, wherein it has been held that the offence u/s 39 of the Act is not a cognizable offence.

7. The learned Counsel for the Petitioners has further relied on the local amendments carried out in the Act by the States of Tamil Nadu and Haryana, whereby the offence u/s 39 of the Act have been made cognizable.

Vide Section 9 of the Tamil Nadu Act No. 39 of 1980, the following section has been inserted in the Act with effect from 12-12-1980, as Section 51-A;-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) any offence u/s 39, Section 39-A or Section 44 of this Act shall be deemed to be a cognizable offence within the meaning of that Code.

Similarly, vide Section 10 of the Haryana Act No. 17 of 1992, the following came to be added as Section 51-A in the Principal Act by way of amendment with effect from 29-9-1992:

Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973, or Section 50, offences under Sections 39, 39-A, 44 and 44-A shall be cognizable and non-bailable.

It was contended that the mere fact that the offence u/s 39 of the Act was specifically made cognizable by way of amendment by the two States of Tamil Nadu and the Haryana, goes to show that the said offence is a non-cognizable one.

8. Admittedly, insofar as State of Himachal Pradesh is concerned, no such local

amendment has been carried out on the lines of State of Tamil Nadu and Haryana.

Section 39 of the Act provides:

39. Theft of energy.-Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than one thousand rupees, or with both; and if it is proved that any artificial means or means not authorised by the licensee is for the abstraction, consumption or use of energy by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer.

Insofar as the decision of the Punjab and Haryana High Court in Ram Kumar's case (supra) is concerned, the same was based on concession of the Public Prosecutor, The relevant observations made therein are to the following effect:

It is conceded on behalf of the State that the offence in question was non-cognizable. The FIR in this case was lodged with the police by the Line Supdt.... Thereafter, the police investigated the case without conforming to the provisions of Section 155(2), Code of Criminal Procedure

The view taken by Kerala High Court in Assistant Engineer, Electrical v. Ramankutty Panachical Narayanan (supra), does not appear to have been followed in subsequent cases. (See : Krishnan v. State 1986 KLT 594),

The High Court of Andhra Pradesh in The Hyderabad Vanaspathi Ltd. Vs. The State of Andhra Pradesh, has held the offence u/s 39 of the Act to be a cognizable offence. It was observed:

It is not disputed that the offence is punishable with imprisonment for three years which is a cognizable offence and the police can investigate the case Therefore, the police are competent to investigate the case for an offence u/s 39 of the Electricity Act.

In The State of Karnataka Vs. Abdul Nabi, the High Court of Karnataka took the view that when a person acting for and on behalf of the Electricity Board lodges a complaint with the police in respect of unlawful extraction of electric energy and the police in turn file a charge-sheet, the prosecution must be regarded as instituted at the instance of the Board, By implication, the offence was held to be a cognizable one,

With respect, the view taken by the High Court of Punjab and Haryana in Ram Kumar's case (supra) and by the High Court of Kerala in Assistant Engineer, Electrical v. Kamankutty Panachical Narayanan, (supra) does not appear to be correct. No doubt, the Act does not specify whether the offence u/s 39 thereof is a cognizable or non-cognizable offence, a combined reading of Section 39 of the Act and list No. II of the First Schedule of Code of Criminal Procedure would

show that an offence u/s 39 of the Act is a cognizable offence.

9. As quoted above, Section 39 of the Act provides for imprisonment for a term, which may extend to three years List No. II of the First Schedule to the Code of Criminal Procedure, which deals with "Classification of offences against other laws" provides that if the offence is punishable with imprisonment for 3 years and upwards, such an offence would be cognizable and non bailable. Section 4(2) of the Code of Criminal Procedure further provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure 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.

10. Admittedly, the Act does not contain any provisions regulating the manner or place of investigation inquiry, trial or for otherwise dealing with the offence(s) under the Act. Therefore, such investigation, inquiry, trial etc. would be governed by the provisions contained in the Code of Criminal Procedure. Reading the provisions of Section 39 of the Act, alongwith List II of the First Schedule to and Section 4(2), Code of Criminal Procedure, the only conclusion is that the offence u/s 39 of the Act is a cognizable offence and the police is competent to investigate into such offence and submit a charge-sheet in respect of such an offence u/s 173 Code of Criminal Procedure, 1973.

The report of the police in the present case was made by Shri Nirmal Atri, Assistant Engineer of the H.P. State Electricity Board, According to the Petitioners, he was not competent to institute the prosecution within the meaning of Section 50 of the Act.

Section 50 of the Act reads:

50. Institution of prosecutions.-No prosecution shall be instituted against any person for any offence against this Act or any rule, licence or order thereunder, except at the instance of the Government or a State Electricity Board or an Electrical Inspector, or of a person aggrieved by the same.

11. In exercise of the powers conferred on it by virtue of Sections 49 and 79 of the Electricity (Supply) Act, 1948 and all other enabling provisions in this behalf, the H.P. State Electricity Board has framed instructions governing the supply of electricity and associated matters. Such instructions have been codified in "H.P.S.E.B. Sales Manual " Instruction No. 203, which deals with the procedure for dealing with the theft of energy cases, empowers all Sub-Divisional Officers, Executive Engineers, Superintending Engineers and Chief Engineers to lodge First Information Reports to the police and launch necessary prosecution on behalf of the Board u/s 50 of the Act in cases falling within their respective jurisdiction, concerning an offence u/s 39 of the Act.

12. Shri Nirmal Atri in his capacity of being an Assistant Engineer was the Sub-Divisional Officer of Sub-Division, Dhaula Kuan of the H.P. State Electricity Board.

He was, therefore, vide Instruction No. 203, referred to above, competent to lodge First Information Report to the police and to launch the necessary prosecution of the Petitioners u/s 39 of the Act on behalf of the Board.

A contention was raised on behalf of the Petitioners that the authorisation made vide Instruction No, 203 referred to above, not having been published in the official Gazette, the Court cannot take judicial notice thereof. Therefore, the prosecution will be deemed to have been launched by a person not competent to do so within the meaning of Section 50 of the Act.

13. In State of Karnataka Vs. Adimurthy alias B. Moorthy, . the notification issued by Karnataka Electricity Board authorising Junior Engineers, Section Officers and Supervisors to institute prosecutions in terms of Section 50 of the Act was not published in the official Gazette. The prosecution was launched by a Supervisor of the Board. The competency of the Supervisor to launch the prosecution was assailed. The apex Court held:

According to the plain English language, the ordinary meaning of the phrase "at the instance of" in the collocation of words "No prosecution shall be instituted ... except at the instance of " must, in the context in which it appears mean "at the behest of, or at the solicitation of". The word "instance" as a verb means "to urge, entreat urgently, importune". The meaning of the phrase "at the instance of as given in Random House Dictionary of the English Language at p. 690 is : "at the urging or suggestion of "Instance" does not imply the same degree of obligation to obey as does "command". That is also the legal sense in which the phrase "at the instance of in Section 50 of the Act has been understood. It is clear upon the terms of Section 50 that nowhere requires that the authorisation should be by a notification published in the official Gazette.

14. Therefore, in the present case as well the mere fact that the requisite authorisation was not published in the official Gazette will not mean that Shri Nirmal Atri, Assistant Engineer in his capacity of being the Sub-Divisional Officer was not competent to launch the prosecution by lodging the report with the police.

The allegations made in the First Information Report and the evidence collected during the course of investigation disclose the commission of a cognizable offence against the Petitioners. The allegations made in the First Information Report are neither absurd nor inherently improbable and there exist sufficient grounds for proceedings against the Petitioners. The proceedings against the Petitioners are not manifestly attended with mala fide or maliciously Instituted.

15. Resultantly, there being no merit in the present petition, the same is dismissed.

Be it stated that any observation made hereinbefore will not in any manner affect the merits of the case nor the same shall be construed as an opinion over the merits of the case.

Cr. M. P. No. 15 of 1996:

In view of the orders passed in the main matter, ad-interim order dated 12-1-1996, as confirmed on 1-3-1996, is vacated.