
(1990) 04 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6468-M of 1987

Multan Singh, Assistant Engineer and ors.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 23-04-1990

Acts Referred:

Citation : (1990) 2 AICLR 18 : (1990) 2 CurLJ 411 : (1990) 3 RCR(Criminal) 11

Hon'ble Judges : A.P.Chowdhri, J

Advocate : L.P. Sood, S.C. Mohunta, H.S. Gill, Advocates for appearing Parties

Judgement

A.P. Chowdhri, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure (for short the Code) for quashing the FIR No. 278 dated 1171987, Police Station. Central, Faridabad, relating to large scale theft of electric energy by various industrial units in connivance with the concerned staff of the Haryana State Electricity Board (for short, the Board). The petitioners are Assistant Engineers or Assistant Executive Engineers who were posted in the M&P Division (i.e. Maintenance and Protection Division) of the Board for Faridabad and Ballabgarh areas during the relevant period from January 1986 to January 1987.

2. According to the FIR the Director, Vigilance & Security of the Board received intelligence reports regarding large scale theft of electric energy by several industrial units in connivance with the staff of the Board. Readings from the feeder meters at various substations as also those from the records maintained at the substations were obtained. Readings were also obtained through the Sub Divisional Officers concerned with respect to the consumer meters of various, industrial units for the period January, 1986 to January, 1987. It was discovered that the variance between the readings at the point of supply and the point of consumption far exceeded the permissible limits of 7% (being +/3% on account of working of meters and 1% due to line losses). It was, therefore, observed that the various industrialists had indulged in large scale theft of electric energy in connivance with the staff of the Board. The staff responsible for sealing/

maintenance of the meters was the M&P Organisation and the petitioners were working there during the period in question. It was requested that the case be got investigated and culprits brought to book.

3. The present petition was filed promptly within about 21/2 months of the lodging of FIR. The case of the petitioners is that the Director, Vigilance & Security had written a similar letter dated 17/4/1981 to the Additional Chief Engineer of the Board relying on the same data and requesting for names of those responsible for the maintenance of the meters in question. The Additional Chief Engineer investigated the matter through the engineers working under him in the field. This resulted in letter bearing Endst. dated 26/4/1988 which was placed on record by Crl. Misc. No. 7461 of 1989. For the sake of convenience the said letter may be referred to as Annexure P6. This was written by Chief Engineer (Operation) South in pursuance of 4th Operational Review Committee meeting. In the letter a number of technical reasons were identified which could be responsible for the variation in the reading at two ends i.e. feeder meter and consumer meter. It also talked of remedial steps. "In other words, responsible authorities of the Board came to the conclusion that the M&P staff or the operational staff need not be blamed for wide variations which could be explained for the above technical reasons unless there was authentic proof of intentional mischief by any individual official/officer.

4. Further case of the petitioners is that as per standing practice, a monthly report is sent to the Head Office. In addition, a special report (Annexure P5 with its enclosure P5 1 to P5/5) was sent by Sub Divisional Officer (Operation), Mathura Road Sub Division, Faridabad, with respect to the particular period of January 1986 to January 1987 specifically in view of the data mentioned in the letter of Director, Vigilance. The special report concluded, on the basis of data mentioned therein that the variance was within permissible limits and in three instances mentioned in Annexure P5/4 the feeder meter at the substation had run in reverse direction for technical reasons given therein.

5. According to the petitioners, the data relied on by the Vigilance Cell did not tally with the record maintained at various substations and the calculations made about line losses were wrong.

6. Further, under instruction No. 103 of the Sale Manual of the Board and guidelines issued in this behalf, Sub Divisional Officer (Operation) was custodian of the consumer meters and the Sub Station Engineer was responsible for the feeder meter. The M&P Organisation to which the petitioners belonged was meant for assisting the staff in Operation Division in checking the accuracy of the meters.

7. There was a change of the political party in power in the State and the petitioners were made scapegoats for gaining, cheap popularity of ending corruption from public offices. The proceedings were thus described as abuse of process of Court.

8. A reply by way of affidavit of Inspector, CID Crimes, was filed. The correctness of data mentioned in Annexure P3 & P4 (letters written by XENs) was disputed. The correct figures were those collected during investigation and set out in a detailed statement Annexure R/1 filed with the return.

9. By order dated 1991/1989 a Commission was issued to Shri K.G. Goswami, Retired Chief Engineer, Haryana State Electricity Board, to give his expert opinion on the question whether the only inference in variation in the meter reading at the substation on the one hand and the consumer premises on the other hand is that the meter had been tampered with or the variation can be explained on any other hypothesis as well. He submitted his report dated 8/1/1990. Objections were filed on behalf of the State and a rejoinder was filed by the petitioners to the said objections. The conclusion of the expert is, "hence in addition to the hypothesis of tampering and theft, there are also other explanations to the cause of variations such as inadequate system, its unmonitored responses during operation and even unintentional human errors."

10. During pendency of this petition investigation has been completed and nine challans have been filed with the Court. It, has not been brought on record as to against whom the challans have been filed and what are the offences alleged against them. All that is said is that one or more of the petitioners is an accused in one or more of these challans. The petitioners have not chosen to assail the challans as such by amending their petitions.

11. Having heard the learned counsel for the parties and having given the matter careful consideration. I am of the view that there is no case for quashing the FIR or the subsequent proceedings. Brief reasons follow :

12. The prosecution and the accused (petitioners herein) rely on different data in order to work out the variance between the feeder meter and consumer meter. Each side claims its figures to be right and those of the opposite side as wrong. Result of the case would depend as to which set can be accepted as correct and to what extent. In the nature of things, this exercise cannot be undertaken in these proceedings. Neither the Chief Engineer Operation in his letter Annexure P6 nor the expert Shri K. G. Goswami in his report dated 8/1/1990 rules out the possibility of tampering with the meter and theft of energy. The only question which would determine whether the petitioners are liable to be prosecuted or not would depend upon whether the prosecution has been able to gather evidence against them or not. This can be done only on a consideration of the evidence collected in the investigation.

13. The main thrust of the allegations in the FIR is against the industrial units indulging in large scale theft of electric energy. There is no inherent infirmity in the FIR. No industrial unit has come forward for quashing the FIR. Even otherwise, various aspects of the inherent powers under section 482 of the Code are fairly well settled. The powers are very wide and their very plenitude requires the Court, as a rule of practice, to exercise them in exceptional cases. It has

been repeatedly laid down that the powers should be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities or to prevent a clear abuse of process of Court. The Apex Court has gone to the extent of laying down that the powers under section 482 of the Code for quashing the proceedings should be exercised in rarest of rare cases (See: Kurukshetra University and another v. State of Haryana and another, 1977, Cri. LJ, 900). Abuse of process of Court can be committed by starting proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. No material has been placed on record to make out a case on any of these counts. For these reasons, the present petition is liable to fail.

14. It must be made clear that the learned Judicial Magistrate would deal with the case arising out of the FIR uninfluenced by the fact that the petitioners moved this petition and have not succeeded in having the FIR quashed. The aspect whether investigation has succeeded in collecting evidence against the accused has not been gone into and it will be the duty of the Court to consider the plea, if any, which the accused may put forward in this behalf at the appropriate stage in the case. The petition is disposed of with the above observations.