
(1997) 04 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 20218-M of 1996

Pitamber Singh Jolly

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 24-04-1997

Acts Referred:

Citation : (1997) 3 RCR(Criminal) 587

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

Advocate : H.P. Verma, Aditya Kumar Sharma, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. Whether a citizen under the garb of technicalities of law can knock the door of this Court under Section 482 Cr.P.C. and when his intentions are quite clear that he wants to hoodwink the law.

2. Before I proceed further I may state at the very outset that Smt. Harjinder Kaur is the correct name of the wife of Pitamber Singh Jolly, present petitioner. Earlier unfortunately for some clerical mistake the challan was presented against Harjinder Singh but it was required to be sent against Smt. Harjinder Kaur. Making huge capital of that omission on the part of the State, Smt. Harjinder Kaur took the benefit of the challan and attacked it by stating that the case was in fact filed against one Harjinder Singh and alleged occurrence as relied upon by the prosecution took place on 10.10.1991 and no occurrence took place on 9.10.1991. Therefore, the proceedings against her was nothing but an abuse of the process of Court. Benefit of omission on the part of State was granted to Smt. Harjinder Kaur. Encouraged by that omission on the part of the prosecution Agency Petamber Singh Jolly this time has filed the present petition under Section 482 Cr.P.C. for the quashment of FIR No. 268 dated 16.10.1991 Police Station, Panchkula under Section 379 IPC read with Section 39 of the Indian Electricity Act, 1910.

3. It may be mentioned here that premises of the petitioner were inspected by

the officials of the Electricity Department on 9.10.1991. Petamber Singh Jolly petitioner and his wife Harjinder Kaur were present at the time of raid. Smt. Harjinder Kaur gave a slip to the authorities on noticing that a raid had been conducted for the inspection of the electric meter and she went upstairs but Shri Pitamber Singh Jolly, present petitioner was found very much present there and it was found that there is a theft of electricity. I may also state here that the electric connection was in the name of one Sh. Lekh Ram.

4. The major steps taken by the petitioner in the present petition are that no occurrence had taken place on 9.10.1991 and that the prosecution cannot be permitted to change the occurrence from 9.10.1991 to 10.10.1991. Secondly prosecution cannot be launched against him without complying with the provisions of Section 50 of the Indian Electricity Act and that the mandatory provisions as required to be performed by the Board i.e. Haryana State Electricity Board had not been complied with as a result of which the present prosecution is also barred under Section 39 of the said Act. The defence of the State stands depicted when it has been categorically stated in the reply that at the time of committing of theft of energy the petitioner was present in the Printing Press owned by his wife as per the statements of the witnesses. At the time of raid his wife went upstairs after noticing the raiding party and the present petitioner remained present on the spot. Further it has been stated by the respondent that it is not necessary to be a consumer for the purpose of committing theft. The petitioner was found present in the Printing Press at the time of committing theft of electricity. Electricity was given to the Printing Press which was owned by his wife Harjinder Kaur. Further in para No. 16 of the written statement a categorical stand has been taken up by the respondent that the petitioner was caught redhanded while committing the theft of electricity by the raiding party. He also put his initials on the documents of the raiding party. This fact is clear from the statement of PW Sanjiv Kumar Junior Engineer and Surinder Mohan SSC. These witnesses have stated that the petitioner was found present at the time of raid in the Printing Press located in House No. 1031, Sector 10, Panchkula. The said factory was in the name of the wife of petitioner. So, FIR was lodged only against Pitamber Singh as well as Harjinder Kaur because the offence was being committed in conspiracy by both of them.

5. In this regard, I would like to refer to the contents of Annexure P.1, Memo No. 2621/OF dated 16.10.1991 written by the Assistant Executive Engineer OP (City), Panchkula to SHO, Police Station Panchkula which memo relates to the registration of the FIR against one S. Harjinder Singh resident of House No. 1031, Sector 10, Panchkula for committing theft of energy. The letter reads as follows :

"The premises of the consumer was checked by the SSE 220 KV R/o Madanpur and Sanjiv Kumar J.E. OP. Div. Panchkula along with undersigned on dated 10.10.1991 at about 1800 Hours. The consumer was found committing theft of energy. The modes of operating by the consumer was to make the electric meter

inoperative by putting the main switch on/off position and connecting the internal wiring of the house directly with HSEB mains passing through his premises. Accordingly the meter and cable of the consumer stands removed. In the light of the prevailing instructions of the Board, the Consumer is likely to pay the damages caused to the Board by way of committing theft of energy or alternatively a criminal case is to be registered against him under Section 379 IPC as he had failed to pay the damages of the theft of energy which costs to Rs. 5,191/ (rupees five thousand one hundred Ninety one only) original bill attached. 10.10.91. DAOriginal Bill."

6. On the basis of the this letter the formal FIR Annexure P.2 was registered in the Police Station on 6.12.1991 vide DDR No. 16 recorded at 3.50 P.M.

7. Present is a petition under Section 482 Cr.P.C. and by this time the law has been crystalised by the Hon''ble Supreme Court of India in its various judgments including the celebrated judgment in 1991(1) RCR (CrL.) 383, AIR 1992 Supreme Court 604 State of Haryana v. Ch. Bhajan Lal and others. No doubt in Annexure P.1 name of the petitioner has not been mentioned. Rather it is only mentioned that the case may be registered against one Harjinder Singh. In fact the purpose of the Board was only to convey that there was a theft of electricity. Since Harjinder Kaur wife of the petitioner was the owner of the press; therefore at that point of time the authorities wrote a letter for the registration of the case and in fact they wanted to get a case registered against Harjinder Kaur but incidentally in the forwarding letter instead of Harjinder Kaur word Harjinder Singh has been written for which Smt. Harjinder Kaur had already taken the benefit. We all know that FIR is not sacrosanct facts. FIR is only an information to the police with regard to the cognizable or noncognizable offence and after recording the FIR the Police authorities would still investigate and collect that evidence from which it can be established as to who are prima facie guilty. The allegations of the officials of the Board were that when the raiding party inspected the premises of the factory Smt. Harjinder Kaur went upstairs. Pitamber Singh petitioner was found present and so much so he signed the documents. Present petitioner is being implicated under Section 120B IPC on the allegations that he along with his wife Harjinder Kaur committed the offence of theft of energy. No doubt proceedings against Smt. Harjinder Kaur have been quashed by this Court vide Annexure P.4 dated 31.5.1996 but the question which survives for determination is whether the present petitioner can also be given the same benefit ? The answer of this Court is in the negative. Rather in the opinion of this Court, the present petition is liable to be dismissed on the short ground that the challan against the petitioner Pitamber Singh has already been presented in the Court of Ilqa Magistrate and as per the dictum of the Hon''ble Supreme Court reported as AIR 1991 Supreme Court 1260 "State of Bihar v. P.P. Sharma" when the allegations of the prosecution and the evidence collected by the investigating agency are under the gaze and scrutiny of the Court, provisions of Section 482 Cr.P.C. cannot be invoked.

8. Yet another ground for the dismissal of this petition which has emerged is that the petitioner Pitamber Singh Jolly earlier filed petition bearing No. 61522M of 1996 in this Court for the quashment of this very FIR and vide order dated 17.9.1996 the said petition was dismissed. A distinction sought to be made to cover this defect by the learned counsel for the petitioner is that the petitioner has not so far appeared before the Court. Rather he has been declared as proclaimed offender and since he has not submitted to the jurisdiction of the criminal court, therefore, he has the right to attack the FIR and the prosecution proceedings under Section 482 Cr.P.C. The argument is not attractive at all. On the completion of the investigation of the case the police was within its domain and in fact was discharging its duty by submitting report under Section 173 Cr.P.C. which can also be filed in the absence of the accused. The Criminal Court is to take the jurisdiction on the police report. The presence of the accused was not necessary before the criminal court. Rather the order dated 17.9.1996 passed by the High Court indicates that the learned counsel appearing on behalf of the petitioner admitted before his Lordship that the challan was filed in the Court as back as in the year 1994. The Hon'ble Lordship was further pleased to say in the said order that the petition under Section 482 Cr.P.C. filed for the quashment of the FIR and subsequent proceedings was highly belated one. For this reason also the petition of the petitioner Pitamber Singh is liable to be dismissed.

9. So far as the application with regard to the provisions of Sections 39 and 50 of Indian Electricity Act are concerned again this Court at this stage cannot straightway give the finding in favour of the petitioner that the proceedings which have been launched against the petitioner are bad in the eyes of law. Letter Annexure P1 which I have reproduced above, prima facie indicates that it had been written on the part of the Board showing clear intention that they wanted to prosecute the offenders whether Harjinder Kaur or her husband or Harjinder Singh. It cannot be said that the allegations against the petitioner are such that it cannot be and should not be enquired into by the Magistrate. Shri A.K. Sharma, the learned counsel for the petitioner relied upon several authorities reported as 1992 Cri.L.J. 1327 Dr. A.M. Berry v. Ravi and others, AIR 1936 Allahabad 742, Vishwanath v. Emperor, AIR 1956 Bombay 354, State v. Maganial; AIR 1965 Supreme Court 666 Avtar Singh v. State; and 1983 RCR (Crl.) 73. With due respect to the Hon'ble lawyer this court is of the opinion that the reliance placed by the counsel for the petitioner on these authorities is misplaced. Rather the case law reported as 1983 RCR 73 and AIR 1991 Supreme Court 1260 goes against the petitioner. It cannot be said that from the allegations no offence is prima facie made out. This Court is not a court of enquiry nor the allegations of facts can be gone into in the proceedings under Section 482 Cr.P.C. Whether the petitioner was present at the time of the raid conducted by the raiding party; whether he entered into the conspiracy in the stealing of the electricity or not are the points to be gone into at a full length trial and it can only be adjudicated if both the parties are afforded opportunity to lead

evidence. In this view of the circumstances, this Court is of the considered opinion that the present petition is totally devoid of any merit which is dismissed with costs. Counsel fee is assessed at Rs. 500/.